

ORAL ARGUMENT NOT YET SCHEDULED

Nos. 18-1107 and 18-1119

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TITO CONTRACTORS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR
ENFORCEMENT OF A DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this Joint Appendix with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on February 14, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 14, 2019

/s/ Jonathan Greenbaum

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EXHIBIT A - Respondent's Post-Hearing Brief

EMPLOYEE NAME	10/5/2013	10/19/2013	11/2/2013	11/16/2013	11/30/2013	12/14/2013	12/28/2013	1/11/2014	1/25/2014	2/8/2014	2/22/2014	3/8/2014	3/22/2014	4/5/2014	4/19/2014
Angel Alvarado	77	48	97	80	104 *	74.5	80	80	93	40	80	79	117.5	77	80
Jose Amaya	96.5	80	80	80	64	78	72	80	72	72	80	80	88.5	89	76
Milton Antezana	-	-	-	-	*	8	80	80	72	80	80	80	80	64	92
Norberto Araujo	120	96	140*	202*	64	65	-	-	-	-	-	54	73	77	90
Roberto Ayala	140	106	80	84.5	72	87.5	81.5	84	90	80	92	87	97	96	88
Alonzie Brown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Geremias Berengana	94.25	73	80	80	64	64	64	77	64	76	74	76.5	33	48	56
Jose Berengana	101.25	110.75	113	76	64	74	80	71	70	80	83	76.5	80	80	79
Manuel Beza	74.75	80.25	115	76	-	-	-	-	-	-	-	-	-	-	-
Leonidas de Jesus Bueco	-	-	-	-	57	56	12	-	37	74	102	64	80	82	78
Vitalino Berengana	116	114.25	110	80	77	80	65	78	70	76	100	80	80	80	80
Edwin Chavez	-	-	-	-	-	-	-	60	78	69	-	-	-	-	-
Henry Castellon	70	84	114	69	-	-	-	-	-	-	-	-	-	-	-
Hector Cortez	103.75	85	121	80	104	80	80	49	76	70	80	80	80	80	80
Anthony Davis	-	-	-	-	-	60	77	74	28	-	-	16	55	8	56
Evarista A. Dell Duarte	-	-	-	-	-	-	-	-	-	-	-	56	73	90	20
Hector Delgado	101	77	80	82	64	80	72	62	59	76	80	80	78	80	70
Jose Antonio Diaz Berengana	56	40	78	80	40	79	72	49	75	62	96	81.5	83	70	68
Roberto Diaz	-	-	-	-	-	-	-	-	-	-	-	-	20.5	33	-
Sabino Diaz	100	83.25	80	80	72	80	72	72	80	80	92	80	88	82	80
Giovany Garza	-	-	-	-	47.25	131	-	-	-	-	-	-	-	-	-
Francisco Garza	-	-	-	-	62	33	80	71	77.5	79	99	80	78	80	80
Jose Grandos	96.25	90.75	113	80	88	80*	67	77	77.5	80	100	80	71	80	80
Sherman Garland	-	-	-	-	-	40	75	78.5	68.5	86	85.5	87.5	32	83	81
Alex Hernandez	-	-	-	-	-	-	-	-	-	-	-	-	-	56	79
Oscar Interiano	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Jose Jimenez	104.25	89.25	80	84.5	72	79.5	81.5	84	88	80	92	87	93	96	88
Adelodun Lawal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hernan Latapy	112	50	80	80	76	79	40	40	72	80	77	80	80	80	80
Mauricio Bautista	110	80	76	88	64	72	72	102	80	72	88	80	93	96	104
Marvin Lopez	-	-	-	-	-	60	-	74	28	-	-	16	40	80	84
Barrington McFarlane	-	-	-	-	-	-	77	-	-	-	-	-	56	8	56
Esleyfer Mendez	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Manuel Medrano	68.5	32	132	307*	56	75	-	73	40	80	102	96	57	83	80
Vidal Morales	recy	recy	recy	recy	recy	79	70	75	68	74	100	40	-	-	-
Jose Oliva	-	-	-	27	80	80	80	80	80	80	112	80	77	80	80
Diego Polar	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Luis Palacios	117	84	101	94.5	48	-	-	-	-	-	-	-	-	-	-
Francisco Palacios	-	-	-	-	-	-	-	-	-	-	-	-	48	72	80
Samuel de Palva	-	-	-	-	42	64	71	71	48	-	-	-	-	-	-
Jorge Ramos	93.5	80	80	88	70	81	77	77	91	78	108.5	88	90	88	98
Leonel Rosales	88.25	85.5	105	80	81	80*	80*	77	40	60	99	67	63	79	-
Manuel Rodriguez	123.75	97.25	101	94.5	64	64	80	75	59	80	91	79	74	80	77
Cesar Rodriguez	98.5	89.25	80	84.5	72	87.5	81.5	84	88	80	92	87	97	96	88
Abner Sosa	-	-	-	-	-	80	80	68	80	72	70	105	88	95	92
Ierato Seotsanyana	-	-	-	-	-	-	-	-	-	-	-	-	-	12	60
Nestor Sanchez	94.75	81.5	80	80	66	59	72	60	60	80	77	72	72	80	80
Junior Vaughan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rahnel York	-	-	-	-	-	40	77	74	28	-	-	16	55	8	56
Domingo Zamora	86.75	86.75	76	88	72	80	64	87	72	72	88	80	93	96	98

Highlighted Employees = those named in the NLRB Complaint (paragraph 18a)

* Employee received multiple checks during pay period (which may signify payment for hours worked outside that pay period)

EXHIBIT A - Respondent's Post-Hearing Brief

EMPLOYEE NAME	5/3/2014	5/17/2014	5/31/2014	6/14/2014	6/28/2014	7/12/2014	7/26/2014	8/9/2014
Angel Alvarado	80	80	77	80	80	79	-	-
Jose Amaya	85	88	56	72	88	72	88	88
Milton Antezana	88	88	80	84.5	87.5	82	82	80
Marvin Alfaro	-	-	49	80	72	80	80	80
Norberto Araujo	112	88	72	80	98	72	75	80
Roberto Ayala	88	83	77	80	80	84	100	88
Alonae Brown	-	-	-	-	-	-	-	82
Geremias Berengana	72	80	64	80	80	80	80	72
Jose Berengana	80	80	80	80	88	80	90	96
Manuel Beza	-	-	-	-	-	-	-	-
Leonidas de Jesus Bueco	78.5	57	32	79	72	80	75	79
Vitalino Berengana	80	80	81	54	-	-	-	-
Edwin Chavez	-	-	-	-	-	-	-	-
Henry Castellon	-	-	-	-	-	-	-	-
Hector Cortez	60	40	80	80	80	80	80	76
Anthony Davis	8	-	-	-	-	-	-	-
Evarista A. Dell Duarte	-	-	-	-	-	-	-	-
Hector Delgado	80	80	80	80	106	69	72	77
Jose Antonio Diaz Berengana	68	64	-	-	-	-	-	-
Roberto Diaz	-	-	-	-	-	-	-	-
Sabino Diaz	80	88	72	80	90	94	86	106.5
Giovany Garza	-	-	-	-	-	-	-	-
Francisco Garza	80	80	80	77	80	80	80	78
Jose Granados	80	80	78	80	-	-	-	-
Sherman Garland	81	64	76	80	86.6	72	81	83
Alex Hernandez	80	80	67	80	80	72	72	88
Oscar Interiano	-	-	-	-	-	-	-	-
Jose Jimenez	88	83	83	80	80	84	101	88
Adelodun Lawal	-	-	-	-	-	11	81.5	80
Hernan Latapy	40	-	-	-	-	-	-	-
Mauricio Bautista	112	88	64	80	80	72	72	24
Marvin Lopez	80	80	80	80	80	80	80	64
Barrington McFarlane	32	72	24	11	28	30	30	82
Esleyfer Mendez	-	-	-	-	48	72	80	88
Manuel Medrano	80	72	80	80	106	37	29	80
Vidal Morales	-	-	-	-	-	-	-	-
Jose Oliva	80	80	80	77	80	76	80	80
Diego Polar	-	-	-	-	-	53.5	60	-
Luis Palacios	-	-	-	-	-	-	-	-
Francisco Palacios	72	80	72	80	80	80	88	96
Samuel de Paiva	-	-	-	-	-	32	54.5	3.5
Jorge Ramos	90	80	56	70	88	80	80	88
Leonel Rosales	-	-	-	-	-	-	-	-
Manuel Rodriguez	68	72	88	80	90	93.5	86	90.5
Cesar Rodriguez	88	83	83	80	80	84	92*	88
Abner Sosa	108	102	80	116	17	-	-	-
Lerato Seotsanyana	70	73	68	70	64	72	64	56
Nestor Sanchez	40	-	-	-	-	-	-	-
Junior Vaughan	-	-	-	-	-	-	-	82
Rahnel York	24	72	24	11	-	28	30	80
Domingo Zamora	101	80	80	80	98	72	80	64

Highlighted Employees = those named in the NLRB Complaint (paragraph 18a)

* Employee received multiple checks during pay period (which may signify payment for hours worked outside that pay period)

BEFORE THE NATIONAL LABOR RELATIONS BOARD**TITO CONTRACTORS, INC.****AND****INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADING AFL-CIO,
DISTRICT OF COUNCIL 51****Cases: 5-CA-119008****5-CA-119096****5-CA-119414****5-CA-123265****5-CA-129503****5-CA-134285****RESPONDENT TITO CONTRACTORS, INC.'S EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

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any evidence in the record – that Berganza stopped supporting the Union sometime in late October before the first recycling employee was discharged.

B. The ALJ's Determination That The Discharges Were Motivated By Anti-Union Animus Is Contrary to a Preponderance of The Evidence

Tito also takes exception to the ALJ's determination that the five discharges were motivated by anti-union animus. The ALJ concluded that "the Respondent's termination of these employees . . . were also motivated at least in part by the discriminatees' union and other protected activity (e.g. Chavez's complaining directly to MES about the goggles)." Order at 27. The Order does not cite to the record or reference any evidence that supports this conclusion. The ALJ does not even attempt to explain the basis for his finding that the terminations were motivated by anti-union animus.

The *only* anti-union evidence proffered by the General Counsel relating to the recycling employees was the self-serving testimony by the terminated employees that Tomas Berganza made anti-union statements during four of the five termination meetings.⁵ However, this testimony is not credible because (1) at the time of the terminations, Tomas Berganza actually supported the Union; and (2) their testimony was refuted by Manuel Beltran, another Tito employee who was present during several of the meetings and who testified that Berganza never made any anti-union statements during those meetings. The ALJ altogether ignores Beltran's testimony.

With the exception of Yasmin Ramirez, all of the terminated employees claimed that when Tomas Berganza notified them of their terminations, he also made anti-union statements. Ms. Ramirez never testified that Mr. Berganza made any such comments. *See, e.g.*, Tr. 525:11 – 24

⁵ It's not clear whether the ALJ credited the testimony of the employees on this point as the Order contains no explanation for the ALJ's determination that the discharges were motivated by anti-union animus.

(Ramirez describing her meeting with Tomas Berganza). Ms. Ramirez also confirmed that Manuel Beltran is often present when Tomas Berganza has to advise an employee of disciplinary action.

Q: Now, you've said that on December 6th, when you had the meeting with Tomas in his office, Manuel Beltra was there also, right?

A: Yes.

Q: Okay. And Manuel is a Tito employee, right?

A: Correct.

Q: And it's not – well, he usually asks – he usually acts as a witness whenever Tomas is going to discipline an employee, right?

A: Correct.

Q: How do you know that?

A: Because Tomas always calls out for him whenever he was going to discipline someone, and many occasions I seen that.

Q: You've seen Manuel in the office with Tomas while he's talking to another employee?

A: Yes.

Tr. 542:20-543:10; *see also* Tr. 1397:9-12 (Beltran testifying that Tomas Berganza always asks him to be present in case some sort of disrespectful comments are made). Manuel Beltran testified that he was present when Tomas Berganza told Aracely Ramos, Yasmin Ramirez and Reyna Sorto of their terminations. Tr. 1397:3-8. He recalled certain details from the conversations between Tomas Berganza and the three women during those meetings. Mr. Beltran also testified that Mr. Berganza did not make any comments about the Union during those meetings. Tr. 1400:7-14, 1401:25-1402:5, 1404:1-6. Mr. Beltran's testimony should be credited as there is no basis to disbelieve anything he testified about.⁶ Similarly, Sandro Baiza, the Union representative who regularly interacted with the employees, testified that the terminated employees never told him that Tomas Berganza made any anti-union statements. Tr. 109:8-23. It is incredible that the

⁶ Mr. Beltran had also signed an authorization card and supported the Union. He is not a supervisory employee.

employees would have neglected to mention this significant detail to Baiza when they talked with him about their terminations.

There is no evidence of anti-union animus whatsoever. In fact, the record shows the opposite – from day one, most of the workers did not like their supervisor Tomas Berganza. When workers first met with Sandro Baiza, they complained about the way they had been treated. Aracely Ramos testified that she complained about Mr. Berganza and that he discriminated against the workers “because of everything.” Tr. 210:21-211:10. When the workers signed the Union authorization cards, they were told that the Union would protect their jobs and they couldn’t be fired. Tr. 614:3-7, 647:16-24. When they lost their jobs for legitimate reasons, they blamed their supervisor and concocted false ‘anti-union’ statements by Tomas Berganza in an effort to show that their terminations were motivated by their participation in Union activity. The employees’ testimony regarding these alleged ‘anti-union’ statements is not credible and was specifically refuted.

C. The ALJ Incorrectly Concluded that Tito Failed to Show That The Employees Would Have Been Terminated Regardless of The Protected Activity.

Tito takes exception to the ALJ’s determination that Tito failed to show that it would have discharged the employees regardless of their protected concerted activities. Tito presented evidence, which the ALJ credited, that MES requested the removal of four of the five employees for performance related reasons. Order at 26. Pursuant to its contract with MES, Tito was obligated to remove an employee when requested to do so by MES:

3.3.2 MES shall have the right to request that the Contractor replace certain of the Contractor’s employees. The Contractor will replace such employees by the start of the next business day following verbal notification from the MES supervisor.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Tito Contractors, Inc. and International Union of Painters and Allied Trades, AFL-CIO District Council 51. Cases 05-CA-119008, 05-CA-119096, 05-CA-119414, 05-CA-123265, 05-CA-129503, 05-CA-131619, and 05-CA-134285

March 29, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On November 4, 2014, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel and the Respondent both filed exceptions and a supporting brief. The General Counsel also filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions²

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). The judge properly based his credibility findings on the weight of the respective evidence, including the admission or absence of documentary exhibits, adverse inferences, and uncontested facts. We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by: (1) telling employee Jose Amaya that he should think about his family before joining an unpaid overtime lawsuit, telling employee Geremias Berganza that the Respondent could sue him for defamation and fire him for complaining to the Union about unpaid overtime wages, telling employees Berganza, Domingo Zamora, and others that employees participating in the unpaid overtime lawsuit would not be permitted to work overtime in the future, telling employee Hernan Latapy that the Respondent "was going to fire all those son-of-a-bitch after everything finishes with the lawsuit," and telling employee Nestor Sanchez that he could get work if he "fix[ed] it" with the Respondent by withdrawing from the unpaid overtime lawsuit; (2) informing a group of employees at a mandatory meeting that workplace issues could be resolved if they voted against the Union, that prounion employees Mauricio Bautista and Zamora were "rotten apples," and that the Respondent could be closed or employees' work subcontracted if the Union continued bothering the Respondent; (3) ordering employee Norbert Araujo to return his company vehicle because he engaged in union or other protected concerted activities; and (4) instructing employees not to take complaints outside their "chain of command" and threatening them with discipline for doing so. Also, in the absence of exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by disciplining and suspending employee Amaya.

and to adopt the judge's recommended Order as modified and set forth in full below.³

1. On October 18, 2013,⁴ several employees filed a class action and collective action lawsuit against the Respondent under the Fair Labor Standards Act (FLSA) for unpaid overtime wages due under State and Federal laws. The employees also began an organizing campaign with District Council 51 of the International Union of Painters and Allied Trades, AFL-CIO (Union). The complaint alleges that, upon learning of the employees' actions, the Respondent committed numerous violations of Section 8(a)(1). The General Counsel excepted to the judge's failure to make findings with respect to several of those allegations. We find merit in seven of these exceptions.

First, we find that Owner and President Maximo Pierola violated Section 8(a)(1) on October 11, 2013, by equating employees' protected activities with disloyalty towards the Respondent. In particular, Pierola told employee Geremias Berganza, "[W]hat you guys are, are a stabber; you guys are stabbing me in my back." After Berganza refused to disavow the unpaid overtime lawsuit when Pierola asked him if he was with or against the Respondent, Pierola added, "I don't want stabbers in the company. If you don't like my company, if you didn't like it, there's thousands of jobs outside." See *Hialeah Hospital*, 343 NLRB 391, 391 (2004).⁵

Second, we find that Project Field Superintendent Manual Alarcon violated Section 8(a)(1) by telling employee Domingo Zamora that an overtime policy memo distributed by the Respondent provided that those who joined an unpaid overtime lawsuit against the Respondent could not work overtime. See *Sambo's Restaurant, Inc.*, 260 NLRB 316, 319 (1982) (unlawful threat where employer told employee that neither he nor his coworker would work overtime if employee filed a grievance over the assignment of overtime).

Third, Supervisor Tomas Berganza violated Section 8(a)(1) on October 31, 2013, by creating an impression of surveillance of employee Aracely Ramos's union activities when, after notifying Ramos of her termination, Berganza stated, "I noticed that you have been speaking with Mr. Sandro from the Union. Now that you are with the Union, call Sandro. Call him to find you a job." See

² The judge failed to include in his decision a "Conclusions of Law" section setting out the specific violations he found. We shall correct this inadvertent omission.

³ We have amended the remedy and modified the judge's recommended Order consistent with our legal conclusions. We shall substitute a new notice to conform to the Order as modified.

⁴ All dates hereinafter are in 2013 unless otherwise indicated.

⁵ The judge found Pierola's statements unlawful, but did not specifically address the General Counsel's contention that the statements equated protected activities with disloyalty.

Flexsteel Industries, 311 NLRB 257, 257 (1993) (employer unlawfully created an impression of surveillance of employee's union activity by telling employee about hearing of his union activity without revealing the source).⁶

Fourth, we find that Supervisor Tomas Berganza violated Section 8(a)(1) on December 18, 2013, by interrogating employees individually about their union activities and support. See *Hudson Neckware, Inc.*, 302 NLRB 93, 95 (1991) (unlawful interrogation where employer asked employee if she had signed a union authorization card). We note that the Respondent does not dispute the judge's factual finding that these interrogations occurred.

Fifth, we find that Supervisor Tomas Berganza violated Section 8(a)(1) on December 18, 2013, by threatening employees with immigration-related consequences and discharges for engaging in union activities. On December 2, 2013, construction employee Mauricio Bautista testified on behalf of the Union at a representation-case hearing to determine the appropriate unit for a Board election. According to Berganza, on December 18, during a meeting with the recycling center employees, he distributed and read to the assembled employees one page from Bautista's testimony in which Bautista explained that he picks up the maintenance orders for the Respondent from the Arlington County Courthouse because the Respondent "does not have many employees with papers, I mean good papers. There are approximately 15 percent of us that have good papers. As a re-

sult, I am sent to the Arlington County Courthouse." Recycling center employee Elcy Bargas testified that Berganza told employees during the meeting, referring to U.S. Immigration and Customs Enforcement by the acronym ICE, that the high percentage of undocumented workers employed by the Respondent "will affect us because Tito Contractors would give our information to ICE. Then in case the Union will win, ICE will come into the company and they will get us arrested." Similarly, recycling center employee Maria Guerra testified that Berganza told the employees that "[i]f the Union wins, then ICE will go into the office, and they will check the papers" and those without papers would lose their job. See *North Hills Office Services*, 346 NLRB 1099, 1102 (2006) ("[T]hreats involving immigration or deportation can be particularly coercive. Such threats place in jeopardy not only the employees' jobs and working conditions, but also their ability to remain in their homes in the United States.").⁷

Sixth, we find that Owner and President Maximo Pierola violated Section 8(a)(1) on February 27, 2014, by soliciting employees' grievances, indicating that they could be resolved through private mediation, and, after employee Norberto Araujo interjected that Pierola had made empty offers about resolving employee grievances for the past 25 years, promising that this would change. See *ManorCare Health Services-Easton*, 356 NLRB 202, 202 fn. 3, 220 (2010) (employer unlawfully solicited grievances and expressly promised to remedy them during an organizational campaign), *enfd.* 661 F.3d 1139 (D.C. Cir. 2011). Araujo, whom the judge found credible in other respects, testified without contradiction that Pierola told the employees that the private mediator could be used to discuss their unpaid overtime claims and that employees therefore would not need to support the Union. Hernan Latapy similarly testified that Pierola said that "we did not need the Union in order to reach an agreement with them, that we could find a mediator in order to resolve the internal problems." We note that the Respondent does not dispute the judge's factual finding that Pierola made these statements about employees' grievances.

⁶ In finding this violation, we note that the judge found that Berganza, who disputed Ramos's account of this conversation, was not a credible witness generally. The judge relied on that finding to discredit Berganza's denial of having told employee Maria Sanchez, at the time he fired her, that he had heard that she had communications with the Union. We similarly find it appropriate to rely on the judge's credibility finding to reject Berganza's denial of having told Ramos, during her termination meeting, that he knew of her communications with the Union. See *Regency at the Rodeway Inn*, 255 NLRB 961, 962 (1981) (although the judge neither ruled on the alleged statutory supervisory status of an individual nor set out credibility resolutions, he "generally credited" the testimony of the alleged supervisor and "generally discredited" the testimony of two other witnesses in other respects; given those circumstances, the Board credited the alleged supervisor's testimony that she lacked supervisory status over the contrary testimony of the other two witnesses) (emphasis in original); cf. *Newsday, Inc.*, 274 NLRB 86, 86 fn. 2 (1985) (finding that although the judge did not specifically rule on an alleged threat made by a supervisor to an employee, the supervisor's denial of threatening an employee was credible because the judge had found the supervisor to be a "generally reliable" witness and discredited the employee's testimony when it conflicted with the supervisor's).

Member Emanuel does not pass on this allegation. He notes that another witness, whose testimony the judge did not address, corroborated Berganza's denial. In these circumstances, he finds the judge's credibility resolutions insufficient to determine whether Berganza actually made the allegedly unlawful statement to Ramos.

⁷ Berganza denied telling the recycling center employees that they would have problems with ICE if they voted for the Union. We find the judge's finding that Berganza was not a credible witness generally to be a sufficient basis for resolving the conflicting accounts. Moreover, even if we were to rely solely on Berganza's own testimony, the employees reasonably understood the Respondent's message that immigration-related consequences would result from engaging in union activities. After all, as the judge found, Berganza distributed and read Bautista's testimony about employees' precarious immigration status on the same day he had interrogated employees about their union support.

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Seventh, we find that Owner and President Pierola violated Section 8(a)(1) on February 27, 2014, by disparaging employee Jose Amaya at an employee meeting. At that meeting, Amaya asked Pierola whether another employee had been fired because she supported the Union. Pierola then singled out Amaya as a friend of employee Mauricio Bautista (whom Pierola had just called a “rotten apple” for supporting the Union), became suspicious that Amaya was recording the meeting, and called Amaya a “maricon” (faggot). See *Milkin Enterprises*, 361 NLRB 283, 290 (2014) (employer unlawfully encouraged the dissemination of a disparaging picture of prounion employee).⁸

2. The judge found that the Respondent violated Section 8(a)(3) and (1) by promulgating and discriminatorily enforcing an overtime policy requiring employees to obtain advance management approval for overtime because of employees’ union and other protected concerted activities. We agree.

Prior to October 2013, the Respondent’s employees routinely worked overtime without advance management approval. On October 24, 6 days after the employees filed the overtime lawsuit, the Respondent distributed a memo to employees setting forth its overtime policy, which, for the first time, required employees to receive advance management approval for overtime.⁹ The next day, October 25, Owner and President Pierola held a mandatory employee meeting during which he expressed surprise about the overtime lawsuit and stated that he would now need to cut employees’ hours. Following the

meeting, however, Pierola told employee Norberto Araujo that nothing would change with respect to his overtime hours because he had not joined the lawsuit. Also that same day, the Respondent’s project superintendent, Manual Alarcon, informed employee Domingo Zamora that the Respondent’s overtime policy memo “says that those of you that are in the lawsuit cannot work” overtime. In addition, on separate occasions throughout October 2013, Respondent Field Superintendent Fermin Rodriguez told employees Zamora, Geremias Berganza, and Hernan Latapy, with other employees present, that the new overtime policy applied only to those who joined the lawsuit.

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), in order to establish a violation of Section 8(a)(3), the General Counsel must first show that the Respondent’s action was motivated by animus against protected activity. If he makes that showing, the Respondent has the burden of showing that it would have taken the same action even absent the protected activity.

The General Counsel has unquestionably met his initial burden here. The quoted statements by management officials, made to employees when the new policy was promulgated and thereafter, establish that the underlying discriminatory purpose behind the policy was to retaliate against those employees who participated in the lawsuit. It thus became the Respondent’s burden to establish that it would have issued the new overtime policy even absent its intent to retaliate against the employees for filing the overtime lawsuit. In order to meet that burden, the Respondent cannot simply “present a legitimate reason for its actions,” but must instead prove that the actions were “‘predicated solely on those grounds, and not by a desire to discourage [protected] activity.’” *Toll Mfg. Co.*, 341 NLRB 832, 847 (2004), quoting *NLRB v. Symons Mfg. Co.*, 328 F.2d 835, 837 (7th Cir. 1964); see, e.g., *Key Food*, 336 NLRB 111, 112 (2001); *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993), review denied 70 F.3d 863 (6th Cir. 1995), enfd. mem. 99 F.3d 1139 (6th Cir. 1996).

The Respondent contends that it issued the new overtime policy solely for the lawful purpose of reducing its future liability for overtime pay. As already noted, the Respondent’s contemporaneous statements to employees show that the new policy was formulated and issued for the sole purpose of punishing Section 7 activity. In addition, by telling employees that it would only apply the new policy to participants in the lawsuit, the Respondent negated any possible inference that its only purpose was for a legitimate reason—to reduce its overtime liability. Had that been the objective, employees would have been

⁸ The General Counsel also excepts to the judge’s failure to find that the Respondent violated Sec. 8(a)(1) by conveying to employees that unionization would be futile when Supervisor Tomas Berganza told employee Elyc Bargas, using a coffee pot as a prop, “pretend that [the Respondent’s] money was inside that pot of coffee . . . the Union cannot go and grab that money in order to increase” employees’ wages. We find insufficient evidence in the record to establish this violation and dismiss the allegation. We find it unnecessary to pass on the General Counsel’s exceptions to the judge’s failure to find additional coercive interrogations or his failure to find that the Respondent, through Pierola, violated Sec. 8(a)(1) by implicitly threatening to withhold employee benefits on April 28, 2014. Those additional violations would be cumulative and would not affect the remedy.

⁹ The Respondent asserts that this overtime policy was in effect prior to the filing of the overtime lawsuit, but was enforced only sporadically. As the judge found, however, there is no evidence that any employees had been informed that such a policy existed prior to the filing of the lawsuit. To the contrary, multiple employees testified that the Respondent had not previously notified them that there was an overtime policy and that they regularly worked overtime without receiving management approval. Moreover, the Respondent’s office manager, Davys Ramos, testified that it was only after October 24 that the Respondent required employees to submit a work authorization form in which a management official authorizes an employee to work a specific amount of overtime. The Respondent has accordingly failed to show that it had an overtime policy prior to October 2013.

told that the policy applied to all of them. And, as explained below, the Respondent in fact did *not* apply the policy to all of them.

In sum, the evidence shows that, even though the Respondent's written overtime policy was facially valid, the Respondent promulgated it for the unlawful purpose of retaliating against those employees who engaged in union and other protected concerted activities by participating in the overtime lawsuit. See *Youville Health Care Center, Inc.*, 326 NLRB 495, 495 (1998) (presumptively valid rule unlawful if adopted for a discriminatory purpose).¹⁰ The Respondent has accordingly not met its *Wright Line* burden.¹¹

Our finding here does not suggest that an employer could never lawfully respond to an FLSA lawsuit by issuing a policy limiting employees' unauthorized overtime work. Such a policy, if motivated solely by legitimate business concerns, would be lawful. Here, however, the Respondent's own statements and actions reveal instead that its overriding motivation was unlawful animus against Section 7 activity, not reducing its overtime exposure. The Respondent's promulgation of its new policy therefore violated Section 8(a)(3).¹²

We also find that the Respondent, true to its word, discriminatorily enforced the overtime policy by refusing to authorize overtime for employees who joined the overtime lawsuit. During the first full pay period after the filing of the overtime lawsuit, the Respondent assigned overtime to various employees, but none to the original seven, named plaintiffs.¹³ This was in stark contrast to the six pay periods immediately preceding the filing of the lawsuit, from July 14 through October 5, when the

seven discriminatees were assigned an average of at least 10 hours of overtime per pay period, with a few working substantially more. Moreover, as the judge found, the Respondent did not lack overtime work during the pay period ending on November 2. The seven employees who were assigned overtime during that pay period worked a significant number of overtime hours. Furthermore, the evidence demonstrates that the Respondent also discriminated against other employees who it suspected would join—and just a few weeks later did join—the overtime lawsuit.¹⁴ Tellingly, in addition to the disparate treatment evinced by the Respondent's payroll records, the Respondent's Vice President Alexander Pierola was unable to explain at the hearing why the Respondent suddenly shifted the overtime hours of the plaintiffs in the lawsuit to other employees who had not joined the lawsuit.¹⁵

¹⁴ The General Counsel excepts to the judge's failure to find that the Respondent discriminatorily enforced its overtime policy against employees Jose Amaya, Jose Diaz, Luis Palacios, Hernan Latapy, and Nestor Sanchez, all of whom joined the lawsuit on November 13. We find merit in this exception. The payroll records show that the Respondent significantly reduced the overtime hours of each of these employees. For instance, over the six pay periods prior to the lawsuit, their average overtime worked per pay period was as follows: Amaya, 9.29 hours, Diaz, 5.13 hours, Palacios, 26.29 hours, Latapy, 26.92 hours, and Sanchez, 9.71 hours. Over the six pay periods after the filing of the lawsuit, the average overtime were: Amaya and Diaz, 0 hours, Latapy, 1 hour, and Sanchez, 2.5 hours. Although Palacios worked a total of 33 overtime hours during the next four pay periods, thereby averaging 8.25 hours per pay period, that was still substantially less than his average, over the six preceding pay periods, of 26.29 hours of overtime per pay period. Once they joined the lawsuit, nearly 4 weeks after it was first filed, these five employees, like the seven initial plaintiffs, immediately saw a sharp decline in their overtime hours. The evidence further supports a finding that the reduction in hours was similarly motivated by the Respondent's hostility toward their involvement in the overtime lawsuit. For instance, upon learning that Amaya was one of the employees who had initially met with the attorneys filing the lawsuit, Pierola bluntly and unlawfully warned Amaya to think about his family before joining the lawsuit. Moreover, the Respondent knew that these employees had previously engaged in protected activities. In 2012, Sanchez, Palacios, Latapy, and Diaz all worked together on a construction project at the Mount Pleasant library in Washington, D.C., for which the Respondent did not pay them the correct wage rate. At that time, Sanchez and Palacios complained about the underpayment and the Respondent terminated them. The Respondent rehired Sanchez and Palacios only after they contacted the Union, which in turn spoke on their behalf with Respondent General Manager Kenneth Brown.

¹⁵ The judge noted that the evidence suggested that the discriminatory withholding of overtime did not stop after the first full pay period following the filing of the overtime lawsuit. We agree with the judge that the evidence shows continued discrimination against the initial seven plaintiffs after the first pay period, as well as Amaya, Diaz, Palacios, Latapy, and Sanchez. We leave to compliance the determination of the extent to which the Respondent discriminated against the plaintiffs in subsequent pay periods.

¹⁰ See also *Bigg's Foods*, 347 NLRB 425, 425 & fn. 6 (2006) (similar); *Lincoln Center for the Performing Arts*, 340 NLRB 1100, 1110–1111 (2003) (similar); *Ward Mfg., Inc.*, 152 NLRB 1270, 1271 (1965).

¹¹ Given the Respondent's statements to its employees, the violation may be found here without a *Wright Line* analysis. Where an employer takes adverse action against employees for the explicit purpose of retaliating against their protected activity, further analysis of its motive for the action is unnecessary. E.g., *Neff-Perkins Co.*, 315 NLRB 1229, 1229 fn. 2 (1994) (unnecessary to apply *Wright Line* where employer admits to discriminating against employees because of their protected activity); *Mast Advertising & Publishing*, 304 NLRB 819, 819–820 (1991) (same). It is sufficient, however, for us to find that the Respondent's motive in this case was unlawful under *Wright Line*.

¹² Member Emanuel agrees that the Respondent's promulgation of the new overtime policy violated Sec. 8(a)(3) and (1). Although the Respondent is directed to rescind that policy, this does not preclude it from establishing a new overtime policy that is genuinely intended to assist it in avoiding violations of the FLSA and is not used to deny overtime opportunities against employees who engage in protected activity.

¹³ The original seven named plaintiffs to the overtime lawsuit were Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, and Domingo Zamora.

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We also find that the Respondent separately violated Section 8(a)(1) by disciplining employees for working overtime without advance management approval pursuant to the Respondent's discriminatory overtime policy. For instance, employee Norberto Araujo consented to joining the lawsuit on February 10, 2014, and on February 27 expressed dismay to Vice President Pierola about the Respondent not having resolved employee grievances over the past 25 years. On February 28, the Respondent disciplined Araujo for working overtime without advance management approval, despite Araujo having done so repeatedly in the past without discipline. The Respondent also issued written warnings to other unnamed employees for not receiving advance management approval prior to working overtime.¹⁶

3. We affirm the judge's findings that the Respondent violated Section 8(a)(3) and (1) by encouraging Maryland Environmental Services (MES) to remove and require the termination of recycling center employees Maria Sanchez on October 30, Aracely Ramos on October 31, Reyna Sorto on November 14, Yasmin Ramirez on December 6, and Maria Chavez on December 13. Applying *Wright Line*, above, the judge found that the Respondent terminated these five employees because of their union and other protected concerted activities.¹⁷ On exception, the Respondent disputes the judge's findings that it knew of Sanchez', Ramos', and Sorto's union and other protected concerted activities and harbored union animus against them. The Respondent also contends that the terminations were for legitimate performance and behavior issues. We disagree.

The judge properly imputed Supervisor Berganza's undisputed knowledge of Sanchez', Ramos', and Sorto's

union activity to the Respondent.¹⁸ The judge also appropriately based his finding of animus on the "Respondent's obvious discrimination against several of its prounion employees," which includes numerous simultaneous 8(a)(1) and (3) violations. Moreover, in agreement with the judge, we reject the Respondent's purported explanations for the employees' terminations. The performance and behavior issues cited by the Respondent as the reasons for the terminations were pretextual, as evidenced by the Respondent's disparate treatment of those employees. For instance, although the Respondent issued multiple warnings to other employees about the need to improve their performance, Sanchez, Ramos, and Sorto were summarily terminated for purported inadequate work performance. Not only was there no credited evidence to support this, but Ramos and Sorto performed the best on a productivity test conducted by the Respondent at their facility. Similarly, although Ramirez and Chavez were each purportedly discharged for a one-time negative interaction with another employee, neither received a warning for such misbehavior or for any other deficiency. The Respondent, however, warned another employee about her inappropriate behavior, including physical abuse of coworkers, on repeated occasions, and eventually terminated her only for job abandonment.

We note, however, that although the judge properly applied *Wright Line* in determining that the Respondent's terminations of Sorto, Ramirez, and Chavez were unlawfully motivated, it was unnecessary for him to apply that analysis with respect to the terminations of Sanchez and Ramos. As previously noted, Supervisor Berganza explicitly referenced their union activities when terminating them. Immediately before he fired Sanchez, Berganza told her that he had heard that she had been talking to the Union. Likewise, when Ramos asked why she was being fired, Berganza told her that he noticed she had been speaking with the Union, and that she could call the Union to find her a new job. These direct statements connecting Sanchez' and Ramos' terminations to their union activity are independently sufficient to demonstrate unlawful discrimination. See *Quality Control Electric, Inc.*, 323 NLRB 238, 238 (1997) (employer statement to

¹⁶ The judge incorrectly stated that Araujo's discipline was not pled as a violation. Paragraph 17 of the complaint alleged that the Respondent issued written and/or oral warnings for violating the overtime policy to employees whose identities were unknown at the time of the filing of the complaint, which would include Araujo's February 28, 2014 discipline. Moreover, we shall order the Respondent to rescind the unlawful disciplines issued to Araujo and other unnamed employees for violating the discriminatory overtime policy. See *National Steel Supply, Inc.*, 344 NLRB 973, 977 fn. 16 (2005) (unnamed discriminatees entitled to make-whole relief where the General Counsel has alleged and proven discrimination against a defined and easily identifiable class of employees), *enfd.* 207 Fed.Appx. 9 (2d Cir. 2006). The identity of those employees shall be ascertained at the compliance stage. *Id.*

¹⁷ Contrary to the judge's suggestion, proving that an employee's union activity was a motivating factor in the employer's adverse employment decision does not require the General Counsel to show particularized animus towards the employee's own union activity. The elements commonly required to support a finding of discriminatory motivation are union activity by the employee, employer knowledge of the activity, and union animus on the part of the employer. See *Libertyville Toyota*, 360 NLRB 1298, 1301 fn. 10 (2014), *enfd.*, 801 F.3d 767 (7th Cir. 2015); *Mesker Door, Inc.*, 357 NLRB 591, 592 & fn. 5 (2011).

¹⁸ Berganza initially supported the Union, but the judge found, based in part on credibility determinations, that Berganza began opposing the Union prior to Sanchez' October 30 termination. The judge also found that Berganza "at least suspected that all five discriminatees supported the Union before they were discharged." Indeed, when he terminated Sanchez, Berganza told her he had been informed that she "had communication with the Union." He similarly told Ramos that he knew she had been speaking with the Union when he fired her and made comments about the Union to Sorto at her termination meeting. The Respondent does not dispute that it knew of Ramirez's and Chavez' union activities.

prospective applicant about his union membership constituted affirmative evidence of unlawful motivation that was “more than *Wright Line* requires” to establish unlawful motive); *District #1, Pacific Coast District, Marine Engineers Beneficial Association*, 259 NLRB 1258, 1258 fn. 2 (1982) (employer statements to employee at time of discharge about her union activity establish unlawful discharge), enf. 723 F.2d 97 (D.C. Cir. 1983).

4. We also affirm the judge’s finding that the Respondent violated Section 8(a)(3) and (1) by laying off construction employees Hernan Latapy and Nestor Sanchez on April 25, 2014, and terminating Latapy on June 25, 2014. The Respondent knew that Latapy and Sanchez supported the Union and were plaintiffs in the overtime lawsuit. On May 1, 2014, Field Superintendent Rodriguez told Latapy that there was work for him as a subcontractor if he disassociated himself from the lawsuit. Rodriguez implored Latapy “not to be a fool” and “lose that opportunity” because “at the end, when the lawsuit ends, [Pierola is] going to fire all those sons-of-a-bitches from the company.” Although Project Superintendent Alarcon texted Latapy about a work assignment in June 2014, Latapy testified that he understood that this was an attempt by the Respondent to give him work as a subcontractor. The Respondent never contacted Latapy about returning to his former position as an employee. Also in June 2014, Field Superintendent Rodriguez told Sanchez that there was plenty of work for Sanchez but that he should go “fix it with [Pierola] or with the lawyers” regarding the lawsuit. Sanchez responded that he had nothing to discuss with the Respondent’s lawyers, and the Respondent never contacted him again about working on any future projects despite Sanchez’ repeated efforts to obtain work. The judge properly found that Rodriguez’ statements alone constituted evidence of discrimination against Latapy and Sanchez. We note again, however, that the judge’s application of *Wright Line* was unnecessary here as well, because the Respondent explicitly linked the employees’ union and other protected activities to its withholding of their future work assignments and ultimately to their termination or layoff. See *Quality Control Electric, Inc.*, above; *District #1, Pacific Coast District, Marine Engineers Beneficial Association*, above.¹⁹

¹⁹ Member Emanuel agrees that the Respondent violated Sec. 8(a)(1) by laying off Latapy and Sanchez and terminating Latapy for initiating and participating in the FLSA lawsuit. He finds it unnecessary to pass on whether the Respondent’s conduct also violated Sec. 8(a)(3) because finding this additional violation is cumulative and does not affect the remedy.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Council 51, International Union of Painters and Allied Trades, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By telling employee Jose Amaya that he should think about his family before engaging in protected concerted activities because he joined the unpaid overtime lawsuit, the Respondent violated Section 8(a)(1) of the Act.

4. By equating employee Geremias Berganza’s protected concerted activities with disloyalty towards the Respondent, the Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees Domingo Zamora, Geremias Berganza, and others that the Respondent would not permit employees participating in the unpaid overtime lawsuit to work overtime in the future, the Respondent violated Section 8(a)(1) of the Act.

6. By telling employee Domingo Zamora that, under the overtime policy memo distributed by the Respondent, those who joined the overtime lawsuit against the Respondent cannot work overtime, the Respondent violated Section 8(a)(1) of the Act.

7. By threatening to discipline employees who took complaints outside their “chain of command,” the Respondent violated Section 8(a)(1) of the Act.

8. By creating an impression of surveillance of employee Aracely Ramos’s union activities, the Respondent violated Section 8(a)(1) of the Act.

9. By interrogating employees individually about their union activities and support, the Respondent violated Section 8(a)(1) of the Act.

10. By telling a group of employees at a mandatory meeting that their workplace issues could be resolved if they voted against the Union, that prounion employees Mauricio Bautista and Domingo Zamora are “rotten apples,” and that it could close or subcontract employees’ work if the Union continued bothering it, the Respondent violated Section 8(a)(1) of the Act.

11. By threatening employees with immigration-related consequences and discharges for engaging in union activities, the Respondent violated Section 8(a)(1) of the Act.

12. By soliciting employees’ grievances and promising to no longer disregard them, the Respondent violated Section 8(a)(1) of the Act.

13. By disparaging employee Jose Amaya during a meeting for his support of the Union, the Respondent violated Section 8(a)(1) of the Act.

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14. By disciplining employee Norberto Araujo and others pursuant to its discriminatory overtime policy, the Respondent violated Section 8(a)(1) of the Act.

15. By threatening employee Geremias Berganza that the Respondent could sue him for defamation and fire him for complaining to the Union about unpaid overtime wages, the Respondent violated Section 8(a)(1) of the Act.

16. By ordering employee Norbert Araujo to return his company vehicle because he engaged in union or other protected concerted activities, the Respondent violated Section 8(a)(1) of the Act.

17. By telling employee Hernan Latapy that the Respondent "was going to fire all those son-of-a-bitch after everything finishes with the [overtime] lawsuit," the Respondent violated Section 8(a)(1) of the Act.

18. By telling employee Nestor Sanchez that he could get work if he "fix[ed] it" with the Respondent by withdrawing from the overtime lawsuit, the Respondent violated Section 8(a)(1) of the Act.

19. By promulgating and discriminatorily enforcing an overtime policy against employees Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, Jose Amaya, Jose Diaz, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora because of their union or other protected concerted activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

20. By discharging, laying off, or otherwise discriminating against employees Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista because of their union or other protected concerted activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

21. By encouraging Maryland Environmental Services to request removal of employees from a jobsite because the employees engaged in union or other protected concerted activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

22. By disciplining and suspending employee Jose Amaya because he engaged in union or other protected concerted activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

23. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having

found that the Respondent committed numerous violations of Section 8(a)(1) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct.

Having found that the Respondent violated Section 8(a)(3) and (1) by promulgating and discriminatorily enforcing an overtime policy against employees because they engaged in union or protected concerted activities, including participating in a collective-action lawsuit, we shall order the Respondent to make Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, Jose Amaya, Jose Diaz, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora whole for any loss of earnings and other benefits suffered as a result of the unlawfully withheld overtime. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall also order the Respondent to rescind its unlawful overtime policy requiring advance management approval and notify its employees in writing that it has done so. In addition, we shall order the Respondent to remove from its files any reference to the unlawful discipline taken against Norberto Araujo and any other employees who were disciplined pursuant to its discriminatory overtime policy and notify them in writing that it has done so and that any such discipline will not be used against them in any way.

Having found that the Respondent violated Section 8(a)(3) and (1) by laying off and/or terminating employees Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista because of their union and other protected concerted activities, we shall order the Respondent to offer them immediate reinstatement to their former jobs, or if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights and privileges previously enjoyed. We shall also order the Respondent to make Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

Having found that the Respondent violated Section 8(a)(3) and (1) by suspending employee Jose Amaya for engaging in union or protected concerted activities, we shall order the Respondent to make him whole for any loss of earnings and other benefits suffered as a result of the unlawful suspension. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

In accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate affected employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, in accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall order the Respondent to compensate all of the discriminatees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

ORDER

The National Labor Relations Board orders that the Respondent, Tito Contractors, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, laying off, or otherwise discriminating against employees for supporting District Council 51, International Union of Painters and Allied Trades, AFL-CIO, or any other labor organization, or for engaging in other protected concerted activities, including participating in a collective-action lawsuit.

(b) Encouraging Maryland Environmental Services to request removal of employees from a jobsite because the employees engaged in union or other protected concerted activities.

(c) Threatening employees with discharge, closure of their work facility or subcontracting of their work, filing a defamation lawsuit against them, withholding of overtime and other benefits, or any other adverse actions if they engage in union or other protected concerted activities, including participating in a collective-action lawsuit.

(d) Promulgating a policy requiring high-level management advance approval of overtime work in response to employees engaging in protected concerted activities, and discriminatorily enforcing such a policy.

(e) Disciplining employees for engaging in union or other protected concerted activities, including participating in a collective-action lawsuit.

(f) Equating employees' protected concerted activities, including participating in a collective-action lawsuit, with disloyalty.

(g) Maintaining a rule which prohibits employees from taking complaints about their working conditions outside their "chain of command."

(h) Creating an impression of surveillance of employees' union or other protected concerted activities.

(i) Coercively interrogating employees about their union or other protected concerted activities.

(j) Threatening employees with immigration-related consequences, including discharge, for engaging in union activities.

(k) Soliciting grievances from employees and promising to remedy them in order to discourage employees from supporting the Union.

(l) Disparaging employees to their coworkers for engaging in union or other protected concerted activities.

(m) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of the Board's Order, notify Maryland Environmental Services in writing that it requests the reinstatement of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez to their former jobs at its Shady Grove (Derwood), Maryland facility or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, Mauricio Bautista, and Jose Amaya whole for any loss of earnings and other benefits suffered as a

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result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and discipline of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista, and within 3 days thereafter, notify them in writing that this has been done and that their unlawful discharges and disciplines will not be used against them in any way.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspension and discipline of Jose Amaya, and within 3 days thereafter, notify him in writing that this has been done and that the suspension and discipline will not be used against him in any way.

(f) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discipline of Norberto Araujo and any other employees disciplined pursuant to its discriminatory overtime policy, and within 3 days thereafter, notify them in writing that this has been done and that any such discipline will not be used against them in any way.

(g) Make Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, Jose Amaya, Jose Diaz, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in having overtime hours withheld, in the manner set forth in the remedy section of this decision.

(h) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(i) Rescind the overtime policy requiring advance management approval of overtime work and notify employees in writing that it has done so.

(j) Rescind the rule prohibiting employees from taking complaints about their working conditions outside their "chain of command" and notify employees in writing that it has done so.

(k) Within 14 days from the date of the Board's Order, restore to Norberto Araujo the use of a company vehicle comparable to the vehicle he drove prior to April 2014.

(l) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place desig-

nated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(m) Within 14 days after service by the Region, post at its Washington, D.C. office and the Shady Grove (Derwood), Maryland recycling facility, copies of the attached notice marked "Appendix" in both English and Spanish.²⁰ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on the intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, as its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 11, 2013.

(n) Within 14 days after service by the Region, hold a meeting or meetings during working hours, which shall be scheduled to ensure the widest possible attendance of employees, at which time the attached notice is to be read to employees in English, Spanish, and in any additional languages, if the Regional Director decides that it is appropriate to do so, by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of a responsible management official and, if the Union so desires, an agent of the Union.

(o) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 29, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT discharge, lay off, or otherwise discriminate against you for supporting District Council 51, International Union of Painters and Allied Trades, AFL-CIO, or any other union, or for engaging in other protected concerted activities, including participating in a collective-action lawsuit.

WE WILL NOT encourage Maryland Environmental Services to request your removal from a jobsite because you engaged in union or other protected concerted activities.

WE WILL NOT threaten you with discharge, closure of your work facility or subcontracting of your work, filing a defamation lawsuit against you, withholding of overtime and other benefits, or any other adverse actions if you engage in union or other protected concerted activities, including participating in a collective-action lawsuit.

WE WILL NOT promulgate a policy requiring high-level management advance approval of overtime work in response to you engaging in protected concerted activities, and discriminatorily enforcing such a policy.

WE WILL NOT discipline you for engaging in union or other protected concerted activities, including participating in a collective-action lawsuit.

WE WILL NOT equate your protected concerted activities, including participating in a collective-action lawsuit, with disloyalty.

WE WILL NOT maintain a rule which prohibits you from taking complaints about your working conditions outside your "chain of command."

WE WILL NOT create the impression that we are surveilling your union or other protected concerted activities.

WE WILL NOT coercively interrogate you about your union or other protected concerted activities.

WE WILL NOT threaten you with immigration-related consequences, including discharge, for engaging in union activities.

WE WILL NOT solicit grievances from you and promise to remedy them in order to discourage you from supporting the Union.

WE WILL NOT disparage you to your coworkers for engaging in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, notify Maryland Environmental Services in writing that we request the reinstatement of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez to their former jobs at its Shady Grove (Derwood), Maryland facility or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, Mauricio Bautista, and Jose Amaya whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, and WE WILL also make such employees whole for reasonable search-for-work and interim employment expenses, plus interest..

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlaw-

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ful discharges and discipline of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Hernan Latapy, Nestor Sanchez, and Mauricio Bautista, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that their unlawful discharges and disciplines will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discipline of Jose Amaya, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension and discipline will not be used against him in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline of Norberto Araujo and any other employees disciplined pursuant to our discriminatory overtime policy, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that any such discipline will not be used against them in any way.

WE WILL make Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, Jose Amaya, Jose Diaz, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in having their overtime hours withheld, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL rescind the overtime policy requiring advance management approval of overtime work, and WE WILL notify you in writing that we have done so.

WE WILL rescind the rule prohibiting you from taking complaints about your working conditions outside your "chain of command," and WE WILL notify you in writing that we have done so.

WE WILL, within 14 days from the date of the Board's Order, restore to Norberto Araujo the use of a company vehicle comparable to the vehicle he drove prior to April 2014.

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The Board's decision can be found at <https://www.nlrb.gov/case/05-CA-119008> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Re-

lations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Letitia F. Silas and Pablo A. Godoy, Esqs., for the General Counsel.

Jonathan W. Greenbaum and Kimberly Jandrain, Esqs. (Coburn & Greenbaum, PLLC, Washington, D.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Washington, D.C. on the following dates: August 4–8, 12–14, 18, and September 11–12, 2014. The International Union of Painters and Allied Trades, District Council 51 filed the charges pertaining to this case between December 16, 2013, and August 6, 2014. The General Counsel issued the initial complaint on July 11, 2014. He filed the complaint in case 05–CA–134285 on August 28, 2014, and I consolidated that case with the others.

This case involves a host of alleged 8(a)(1) violations, including alleged threats, interrogations, solicitation of grievance and promises predicated on eschewing union activity. It also involves a number of alleged 8(a)(3) and (1) violations, including: withholding overtime in retaliation for protected activity, retaliatory warnings and a suspension, and the terminations of the following employees: five of Respondent's employees working at the Montgomery County Recycling Center: Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez.¹ This case also involves the termination and/or lay-offs of Tito Contractors construction employees Hernan Latapy, Nestor Sanchez, and Mauricio Bautista and allegedly depriving Norberto Araujo of use of a company vehicle.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, Tito Contractors, a corporation, has its primary office in the District of Columbia. It provides construction services and labor mainly to state and local governmental entities in Maryland and Virginia. The construction services include carpentry, painting, drywall installation and snow remov-

¹ In this decision I will ignore the Latin American custom of referring to individuals by the father's last name and mother's last name. Thus I will refer to Aracely Ramos rather than Aracely Ramos-Garcia.

al. Respondent also provides labor to the Maryland Environmental Services Department (MES) at several recycling centers. Respondent performed services in excess of \$50,000 outside of the District of Columbia in 2013. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Union of Painters and Allied Trades, District Council 51 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Introduction: Respondent's hierarchy

The highest ranking official at Tito Contractors is Maximo "Tito" Pierola, its president and owner. The next highest ranking officials are his son Alex Pierola, vice-president and General Manager Kenneth Brown. Next in the hierarchy in the construction side of Respondent's business are a number of project superintendents including Edward Vivas, Manuel Alarcon and Jorge Ramos. Below these project superintendents are field superintendents such as Fermin Rodriguez. Below the field superintendents are on-site crew leaders, including some of the alleged discriminatees. It has not been established that the crew leaders are supervisors or agents of Tito Contractors within the meaning Section 2(11) and 2(13) of the Act.

On the other hand, Respondent in its July 24, 2013 Answer to the Amended consolidated complaint, admitted that Maximo Pierola, Alex Pierola, Kenneth Brown, Manual Alarcon, and Fermin Rodriguez were supervisors pursuant to Section 2(11) of the Act. I also find that they were agents pursuant to Section 2(13) of the Act. Whenever any of these individuals spoke to rank and file employees about matters relevant to this case, the employees reasonably understood that these individuals were speaking on behalf of Tito Contractors and were reflecting company policy, *Community Cash Stores*, 238 NLRB 265 (1978).

At the Montgomery County Recycling Center, Respondent's top on-site supervisor was Tomas Berganza. In its July 24, 2013 answer, Respondent admitted that Berganza was at all relevant times a supervisor pursuant to Section 2(11) of the Act. I find that he was also an agent of Respondent pursuant to Section 2(13) for the reasons stated above with regard to the construction supervisors. At times relevant to this case, Berganza reported directly to Maximo Pierola, Alex Pierola, and Office Manager Davys Ramos.

The events regarding the allegations concerning the recycling center are somewhat confusing because Tomas Berganza at least initially appeared to support the Union and signed a union authorization card. However, as discussed below, at some point Berganza realized that he was a statutory supervisor and acted entirely in the interests of Respondent and as its agent.

Berganza knew of the union activity amongst the recycling employees and at least suspected that all five discriminatees supported the Union before they were discharged. However, Berganza signed a union authorization card on October 18 and at least outwardly supported the Union until sometime in November. He was identified as a union supporter in the Union's letter to Respondent dated November 14, 2013.

At some point in time, Tomas Berganza learned that he was a statutory supervisor and thus not protected by most of the provisions of the Act. Berganza testified he learned that from Respondent's counsel between Thanksgiving and Christmas 2013 (Tr. 472). However, I do not credit that testimony and infer that he became aware of this much earlier. He testified that at some point he stopped cooperating with the Union, for example, by not answering telephone calls from the union organizers. I infer that Berganza began operating in Respondent's interests in opposing union organizing before Maria Sanchez's discharge on October 30 (Tr. 333). This may have been due to his realization that he was a statutory supervisor or for other reasons.

The basis for my factual findings

In making factual findings, I am generally loath to take either parties' self-serving testimony at face value, unless it is uncontradicted or supported by non self-serving evidence in the record. I would note in this regard that Maximo "Tito" Pierola and Manuel Alarcon, who are alleged to have committed unfair labor practices, did not testify at all. Other of Respondent's supervisors and/or agents were called as witnesses by the General Counsel but not by Respondent, such as Fermin Rodriguez, Tomas Berganza, and Alex Pierola. Respondent relied principally on the testimony of its general manager, Kenneth Brown, who in many instances had no first-hand knowledge regarding the facts of the case. Thus, much, if not all, of the testimony of the General Counsel's witness testimony regarding unfair labor practices pertaining to Respondent's construction employees is uncontradicted. Where that it the case, this testimony is credited.

The record with regard to Respondent's recycling operations is quite different. Tomas Berganza, Respondent's supervisor at the Shady Grove or Derwood, Maryland recycling center, was called by the General Counsel and contradicted the testimony of the discriminatees. Also, the General Counsel called MES supervisors David Wyatt and Mark Wheeler as witnesses, who were generally supportive of the Respondent's position. The part of the case involving the recycling employees thus requires resolution of the contradictory testimony of witnesses.

As to those instances in which there is a conflict in testimony, I find no basis for resolving the credibility of the witnesses by virtue of their demeanor when testifying. Thus, I base these credibility determinations on the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole, *Daikichi Sushi*, 335 NLRB 622 (2001).

As early as October 11, 2013, Maximo "Tito" Pierola learns his construction employees are filing a class action suit against Respondent. Respondent's construction employees file suit pursuant to the Fair Labor Standards Act on October 18, 2013;

About a dozen or so of Respondent's construction employees met with union officials in September 2013. Among the subjects discussed was employees' belief that they were not being paid for overtime work as required under federal law. The Union facilitated contact between these employees and the law firm of Latham and Watkins, which is representing the employees on a pro bono basis. Six employees met with the firm's

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attorneys on September 16, 2013 (GC Exh. 96).

A number of employees met with the firm's attorney prior to October 11. The law firm filed a class action suit against Respondent for failing to pay Roberto Ayala, Mauricio Bautista, Geremias Berganza,² Hector Delgado, Sabino Diaz, Jose Jimenez, and Domingo Zamora in conformity with the requirements of the Fair Labor Standards Act on October 18, 2013. On November 13, 2013, Francisco Campos, Cesar Rodriguez, Nestor Sanchez, Milton Vega, Miguel Padron, Manuel Rodriguez, Luis Palacios, Jose Granado, Jose Berganza, Jose Amaya, Jose Diaz, Vitalano Berganza, and Hernan Latapy joined the suit. On November 22, 2013, Manuel Medrano joined the suit. Among the others joining the suit in 2014 was Norberto Araujo on May 5.³

Respondent's owner, Maximo Pierola was aware that the suit was going to be filed as early as October 11. On that day he called two employees and expressed his feelings about the lawsuit.

Pierola called employee Jose Amaya and told Amaya that he was very disappointed that the employees or that Amaya personally had taken legal action against his company. Pierola told Amaya that he should think about his family before he decided to do the things he was doing. (Tr. 1138–1142).⁴

Maximo Pierola also called Geremias Berganza on October 11 (Tr. 818). He told Geremias that he could not believe that Geremias was doing this to him. Maximo told Geremias that "you guys are stabbing me in my back." He also told Geremias that it was never too late to reverse his decision to file suit. Further, Pierola said to Geremias that he did not want backstabbers in the company. Also, he said that if Geremias did not like his company, there were thousands of jobs elsewhere (Tr. 820–821).

Fermin Rodriguez tells employees that those participating in the FLSA lawsuit will not work overtime

On one or more occasions in October 2013, Fermin Rodriguez, one of Respondent's superintendents, told employees, including Domingo Zamora and Geremias Berganza, two of the original seven FLSA plaintiffs, that Respondent would not allow those employees who participated in the FLSA lawsuit to work overtime. Although not pled as a violation, this evidence is relevant to the fact, as discussed later, that, at least in one pay period, Respondent discriminated against the original seven

plaintiffs in assigning overtime work.⁵

October 18, 2013: First contact between Respondent and the Union in 2013

There was interaction between the Union and Respondent in 2012 when Sandro Baiza, a union organizer, spoke or attempted to speak with Respondent's General Manager Kenneth Brown, on behalf of three employees who had been fired (Tr. 1328–139). Respondent reinstated all three. Baiza spoke directly to Respondent's owner, Maximo "Tito" Pierola in January 2013 on behalf of one of these employees, who still had a wage dispute with Respondent.

The first contact between the Union and Respondent's management regarding an organizing drive in 2013 occurred on October 18, 2013, the same day on which the FLSA suit was filed. On that day, Tomas Berganza,⁶ Respondent's supervisor at the Shady Grove, Maryland (also referred to as the Derwood facility) recycling plant met with union organizer Sandro Baiza and one of Respondent's construction employees, Mauricio Bautista. At the time Berganza and Bautista, who had been in contact with the union for several months, were close personal friends. Berganza signed a union authorization card at that meeting.

As discussed below, Berganza, on behalf of Respondent, engaged in a number of unfair labor practices. It is unclear whether he was in fact interested in joining the Union in October. However, he was no longer interested in joining the Union or assisting it by early November. Tomas Berganza may have changed his mind when he learned that he was a statutory supervisor and thus unprotected by the provisions of the NLRA.

In October, Baiza asked Tomas Berganza to assist him in getting other Tito employees at the recycling center to sign cards. Berganza asked Baiza which of Tito's employees at the recycling center had already signed cards (Tr. 332). Within a week of October 18, Berganza had a phone conversation with organizer Baiza. Baiza asked Berganza if a certain four employees had signed authorization cards. Berganza informed him that they had not. Then Berganza asked Baiza if Yasmin Ramirez, Maria Chavez, Reyna Sorto, Aracely Ramos, and Elizabeth Lemus, had signed cards.⁷

² Berganza is not related to Respondent's supervisor Tomas Berganza, but is a cousin of Respondent's supervisor Fermin Rodriguez.

³ Although beyond the scope of this proceeding, it is clear that Respondent did not pay employees time and a half for hours worked outside of normal business hours for Arlington County. Respondent's general manager, Kenneth Brown testified that Owner Maximo "Tito" Pierola did not read his contract with Arlington closely enough and did not realize that he could bill Arlington time and half for hours worked outside of normal business hours (Tr. 1301).

⁴ Although Amaya did not join the suit until November, his testimony about his October 11 conversation with Maximo Pierola is uncontradicted. I therefore credit it. I infer that Pierola found out that Amaya was one of the employees who met with the Latham and Watkins attorneys earlier.

⁵ The complaint alleges that Rodriguez and Manuel Alarcon told employees that the plaintiffs could not work overtime without the approval of senior management. In fact, the record shows that Rodriguez told employees that the plaintiffs would not get overtime work. I find that the statements made by Rodriguez violated Sec. 8(a)(1). There is no due process issue here as the gravamen of the violation is the same, a statement that Respondent would discriminate on the basis of protected activity. Moreover, Respondent did not avail itself of the opportunity to seek a contradiction from Fermin Rodriguez, when he was called a witness by the General Counsel.

⁶ Whenever I refer to Berganza without a first name, I am referring to Tomas. Other employees with the same last name will be referred to by their first and last names, or simply their first name.

⁷ I credit the testimony of Maria Guerra, a current employee, who overheard this conversation in Baiza's car (Tr. 163–164). Moreover, Berganza admitted that he asked Union Organizer James Coats whether specific employees had signed union cards, including Elizabeth Lemus and Maria Chavez (Tr. 333–334). Coates told Berganza that an employee named Maria had signed a card. Although there were several

Tito's work at the Montgomery County Recycling Center

At the Montgomery County Recycling Center in Shady Grove, 29 Tito employees work on a conveyor belt separating recycling materials into different categories, e.g. glass, clear plastic, colored plastic, etc. These employees work at the recycling center pursuant to a contract between the State of Maryland Environmental Services Department (MES) and Tito Contractors. Two or 3 employees of MES, including Juana Rosales and Norma Garcia, also work on the sorting line. Part of their responsibilities is to oversee the work of the Tito employees. The contract between MES and Respondent gives MES the right to request that Respondent remove any of Respondent's employees from the site. Respondent is required to comply with this request (GC Exh. 95, sec. 3.3.2).⁸

The senior MES employees at Shady Grove are Field Operations Supervisor David Wyatt and Mark Wheeler, the operations manager. Wheeler reports to Wyatt. Neither Wheeler nor Wyatt are proficient in understanding spoken Spanish. Respondent's on-site supervisor, Tomas Berganza, often serves as the translator between, Wheeler or Wyatt and the Tito rank and file employees at the recycling center.

A Montgomery County employee, Thomas Kusterer, a project manager in the County Division of Solid Waste, is also responsible for the recycling center. The center produces plastic water bottles from recycled materials. Thus, it produces income for the county, which is dependent on the production of the Tito recycling employees.

Respondent's productivity tests for its recycling employees

At some point in the late summer of 2013, Tom Kusterer, Montgomery County's project manager, told MES' supervisors, Wyatt and Wheeler that the production of plastic bottles at the Shady Grove recycling center had declined. Wheeler discussed this with Tomas Berganza, who devised a productivity test for Tito's employees at the request of MES and Kusterer. Each employee was tested on the number of hoppers they could fill on two test days at station 37a. These tests were conducted between September 9 and November 27, 2013; the results were provided to MES.

None of the five alleged discriminatees, who were later fired by Respondent in the fall of 2013, was a particularly low scorer. Maria Chavez was the top performer. Aracely Ramos and Reyna Sorto were also among the top performers. No action was taken against the poorer performers on the test (GC Exh. 14). In fact, it appears nobody made any use of the test results. Mark Wheeler's day planner for the months of October and November indicates that he monitored the performance of alleged discriminatees Reyna Sorto and Yasmin Ramirez closely, but did no monitoring of the poorer performers on the productivity test, such as Sylvia Sandino, Adriana Villavicencio, Miri-

Tito employees named Maria at the recycling center, Berganza suspected or knew Coates was talking about Maria Chavez. (Tr. 333-337).

Four of these five employees, excluding Lemus, were fired by Respondent within the next 2 months.

⁸ The section provides: "MES shall have the right to request that the Contractor replace certain of the Contractor's employees. The Contractor will replace such employees by the start of the next business day following verbal notification from the MES supervisor."

am Meija and Estella Rodriguez. (GC Exh. 48(a), GC Exh. 14).⁹ Chavez' performance was consistent with the fact she was most skilled sorter at the facility, Tr. 725.

October 25, 2013: Respondent issues new policy on overtime for its construction employees

A week after being informed of FLSA lawsuit, Maximo Pierola conducted a meeting for all his construction employees. He announced that henceforth all overtime work would have to be approved in advance by either himself, his son Alex Pierola, or General Manager Kenneth Brown. Superintendent Manual Alarcon had made a similar announcement to employees in Virginia the day before. Although, Respondent contends such a policy existed prior to the filing of the lawsuit, such a policy was not strictly enforced. At the October 25 meeting, a memo setting forth the policy was distributed to all construction employees.

On October 25, after the meeting ended, Norberto Araujo approached Maximo to complain that he had not been paid enough for work he had performed at the University of Maryland. Pierola told him that Respondent "would fix that." Araujo asked Pierola about the memorandum. Pierola told Araujo that since he had not joined the lawsuit,¹⁰ nothing would change with respect to his overtime hours. At some point, Respondent's field superintendent, Fermin Rodriguez, also told employees that the new or newly enforced overtime policy only applied to those employees who joined the lawsuit.

October 30, 2013: Respondent discharges Maria Sanchez

In 2013 one of the MES employees working on the production line at the Shady Grove recycling center was Juana Rosales. She is and was highly valued by MES. On about October 30, Rosales was told that a Tito employee had called her a whore. Another employee told Rosales that the employee who called Rosales a whore was Maria Sanchez. Sanchez had worked at the recycling center for 6 months, although she had worked for Tito Contractor's construction division before that.

Rosales complained to Tomas Berganza, who told her to tell MES Operations Manager Mark Wheeler (Tr. 1388-1392). However, Wheeler was not at work when Sanchez was fired and testified that he had no involvement in requesting Sanchez's removal (Tr. 689).¹¹

Tomas Berganza testified that Rosales complained to Wyatt. However, Rosales did not testify that she went to Wyatt or anyone else at MES about Sanchez.

⁹ Villavicencio and Meija are identified as union supporters in the Union's November 14 letter to Respondent. Wheeler's first notation about the performance of any alleged discriminatee during the relevant time period was on October 10, 2013, the day before Maximo Pierola called Jose Amaya and Geremias about the FLSA suit. The notation is about Yasmin Ramirez, whose husband, Jose Jimenez, was one of the original FLSA plaintiffs. This is a further indication the MES' removal requests were related to the protected and union activity of the discriminatees.

¹⁰ Araujo joined the suit in 2014.

¹¹ Thus, it is clear that all the post-it notes in Wheeler's day planner (GC Exh. 48(a)), one of which recounts the reasons Respondent requested removal of Sanchez from the jobsite, are not contemporaneous with the event recorded.

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Wyatt's testimony regarding Sanchez is as follows:

Q. Are you familiar with someone by the name of Maria Raquel Sanchez?

A. Yes.

Q. And who was she?

JUDGE AMCHAN: Well, I mean, I know who all these people

are. He knows who they are. What do you want him to

Q. BY MS. SILAS: Did you request her removal?

A. Yes.

Q. Why?

A. Performance, I believe.

Q. What was it about her performance?

A. Picking slowly.

Q. Did Tomas tell you that?

A. I can't remember if Tomas or Norma or Juana came to me.

Q. I see. And any other reason for her removal?

A. I can't remember if it was Sanchez that was teasing the coworkers, or which lady it was.

Tr. 751.

Since Rosales did not testify that she complained to Wyatt about Sanchez and he could not recall whether or not she did, I find that she did not do so. Since Norma Garcia did not testify, I find there is no credible evidence that she complained to Wyatt about Sanchez' work performance.

It is unclear why David Wyatt and Mark Wheeler were so eager to support Respondent in this case. However, neither of them is a credible witness. Given the ambiguity of Wyatt's testimony, there is absolutely no credible evidence that there was anything wrong with Sanchez's performance or that anyone told Wyatt that there was. Tomas Berganza testified that he talked to Sanchez once about working too slowly (Tr. 350). He did not testify that he complained about this to Wyatt or Wheeler.

I find that any information that Wyatt received about Sanchez came from Berganza and was motivated by Respondent's desire to thwart the organizing drive and/or to get rid of employees who complained about working conditions in concert.

Rosales had a troubled relationship with a number of Tito employees, but Sanchez was not one of them. There is no credible evidence that Sanchez called Rosales a whore or anything else derogatory.

On October 30, Respondent, by Alex Pierola fired Sanchez, on Berganza's recommendation. Respondent had never disciplined Sanchez prior to October 30.¹² The termination letter signed by Alex Pierola does not mention Sanchez calling Rosales any derogatory names; it says MES requested her re-

moval for "unsatisfactory work behavior."

Respondent discharges Aracely Ramos on October 31, 2013

Aracely Ramos had worked for Respondent at the Montgomery County recycling center for three years before she was fired on October 31, 2013. During that period she had received one disciplinary warning in June 2013 for calling Tomas Berganza unfair and a racist.

Juana Rosales, on one occasion, reported to Berganza that Aracely Ramos left the production line without first informing Rosales. She was unable to testify as to when this occurred or relate this incident in any way to the date of Ramos' termination (Tr. 1385-1388).

David Wyatt testified that he requested that Ramos be removed because her performance was very low (Tr. 752). As in the case of Sanchez, there is no credible evidence to support such a contention. In an affidavit given to the Board during its investigation of the union's charges, Wyatt stated that sometime in October 2013 Norma Garcia and Juana Rosales told him that Ramos was letting materials bypass her on the sorting line to bother coworkers. Rosales not did testify to saying any such thing to Wyatt; Garcia did not testify and I find that the statement is false.

Wyatt went on to state in his sworn affidavit that he spoke to Berganza about this. Wyatt told Berganza to tell Ramos that if this happened again, she would no longer be employed at the recycling center (GC Exh. 17). Berganza testified that Ramos "admitted" that she was letting materials pass her station to bother her coworkers (Tr. 366). Ramos denies telling Berganza this and I credit her testimony. There is no reason why Ramos would make such a confession to Berganza. In any event Berganza told Wyatt that Ramos was letting materials pass to bother her coworkers.

Wyatt testified that either Berganza or Wheeler advised him of problems with Ramos' production. However, Wheeler did not testify to making any complaints about Ramos. Indeed, he was on vacation when she was fired. I conclude that all of Wyatt's information about Ramos came from Berganza. Rosales testified that she spoke to Berganza about Ramos. She did not testify about discussing Ramos with Wyatt or Wheeler.

Berganza's email (GC Exh. 17), indicates that Wyatt as of 10:49 a.m. on October 31, Wyatt had not requested Ramos' removal from the jobsite. In General Counsel's Exhibit 18, Berganza's note to Alex Pierola and Davys Ramos, indicates that between 10:49 and 12:35 a.m., Wyatt did so after talking to Berganza again. Respondent then discharged Ramos.

Respondent discharges Reyna Sorto on November 14, 2013

On November 1, 2013, the day after Respondent discharged Ramos and two days after it discharged Sanchez, Tomas Berganza sent an email to Office Manager Davys Ramos stating that he had been watching Reyna Sorto for a week and that Sorto was working very slowly. He stated further that he had not discussed this with Sorto and hoped to talk to Mark Wheeler when he returned from vacation (GC Exh. 20).

Mark Wheeler's testimony is inconsistent with Berganza's contemporaneous email and thus not completely credible. He testified that he started monitoring Sorto himself the entire month of October and discussed her work performance with

¹² Sanchez testified that Berganza told her that he had heard she'd been talking to the Union just before he fired her, as well as complaining about her performance on the job. She had not received any prior warnings about her performance. Berganza denied mentioning the Union to Sanchez. I find Berganza not to be a credible witness generally. Thus, although self-serving, I credit Sanchez.

Berganza in October (Tr. 711–712). He also testified that Berganza told him in October that he had talked to Sorto about her work habits, which is also inconsistent with the Berganza November 2 email.

Mark Wheeler testified that he noticed that Reyna Sorto's production had declined. On November 1, 2013, Berganza called Reyna Sorto to his office and asked her why she was working slowly. Sorto told him her left arm hurt. Berganza told Sorto to get a doctor's note within the next 2 weeks. Berganza spoke to Mark Wheeler about Sorto's production on November 8. Wheeler, who generally observed the Tito employees on the sorting line three times a day, said he would watch Sorto. Wheeler noticed that Sorto worked considerably slower when she was not aware he was watching her.

Regardless of whether this was true or not, there is no evidence as to how Sorto's production compared to that of other employees. Based on the productivity tests it is likely that even when Sorto was not working to her full capacity, she was working faster than the employees who scored much lower on the test and who were never monitored by Wheeler or removed from the jobsite.

In late October, Berganza also informed Wheeler that another employee, Alba Ruanda, told him that Sorto was telling employees to slow down on the production line. Neither party called Rauda to testify, so there is no credible evidence that this was true. On or about November 14, Wheeler directed Respondent to remove Sorto from the recycling center.

November 15, 2013: Filing of Representation Petition

On November 15, the Union filed a representation petition with the NLRB seeking to represent Respondent's recycling employees at Shady Grove (aka Derwood, MD), Cockeysville Maryland and its construction employees.

The day before the petition was filed, the Union sent Respondent a letter identifying 35 union supporters in Respondent's workforce. Among those named were a number who are alleged to the victims of discriminatory conduct by Respondent. These included five recycling employees who were terminated between October 30 and December 13, 2013: Maria Sanchez, Yasmin Ramirez, Reyna Sorto, Aracely Ramos, and Maria Chavez. It also included Mauricio Bautista, Hernan Latapy, who were discharged by Respondent in 2014, Nestor Sanchez, who was laid off and 12 employees who were allegedly denied the opportunity for overtime work. Recycling Supervisor Tomas Berganza was also named as a union supporter in the letter.

December 2, 2013: Representation Hearing

On December 2, 2013, the Board conducted a representation hearing to determine the appropriate unit for an election. Mauricio Bautista testified in this proceeding on behalf of the Union.

Respondent discharges Yasmin Ramirez on December 6, 2013

Yasmin Ramirez worked for Respondent for 6 years and at the recycling center for four years. During that time, she had been disciplined once in 2011 for failing to wear safety glasses. In early October 2013 one of Respondent's employees, Martha Serpas, complained to Tomas Berganza that Yasmin Ramirez had been teasing her and calling her old and stupid (Tr. 393).

Mark Wheeler joined Berganza and Serpas on this occasion. Berganza translated for Serpas, who speaks little or no English, and Wheeler, who speaks only a little Spanish. Wheeler told Berganza that he would watch Ramirez.

It is unclear why Wheeler decided to monitor Ramirez's work performance because Serpas' complaint was not about Ramirez's work. This decision could well be related to Respondent's desire to retaliate against Ramirez's husband, Jose Jimenez, one of the original FLSA plaintiffs. Wheeler testified that he watched Ramirez for the entire month of November. He noticed Ramirez scooping material on occasions on the recycling line, which is improper, on October 10 and on October 27 or 28. If Wheeler noticed her scooping material on any other day, he did not consider it significant enough to make a contemporaneous note in his day planner.

As noted earlier, the post-it notes in General Counsel's Exhibit 48(a), Wheeler's day planner, are not contemporaneous with the event recorded. I do not credit his post-it notes indicating that Juana Rosales chastised Ramirez for scooping material or that Wheeler observed Ramirez scooping material on any date in November. Indeed, his testimony at transcript 729 and 731 indicates, contrary to his post-it note, that Wheeler had no idea whether anyone chastised Ramirez for scooping material. Tomas Berganza did not testify to discussing this with Ramirez. Even Wheeler's day planner notes are suspect in that there are two versions, one showing that he observed Ramirez scooping material on Sunday, October 27, and the other with that date blank.¹³

Rosales testified about discriminatees Sanchez, Chavez and Ramos, but did not say word one about Yasmin Ramirez. There is no credible evidence that anyone chastised Ramirez about scooping material. Respondent's exhibits indicate that if it had any issues with Ramirez it involved her relationship with other employees, not the manner in which she performed her job.

For reasons not explained in this record, according to his day planner, Mark Wheeler, met with Martha Serpas on November 27, 2013.¹⁴ Berganza apparently acted again as translator. Serpas apparently complained about comments Ramirez made to her a month earlier. It is unclear whether Serpas made any complaints about Ramirez that were more recent. Afterwards, on the same day, Tomas Berganza sent an email about this meeting to Maximo and Alex Pierola and Respondent's office manager, Davys Ramos (GC Exh. 27). The email stated that Serpas complained that Ramirez teased her and recounted an incident that occurred in late October.

Wheeler testified that he requested that Respondent remove Ramirez from the Shady Grove site. On December 2, Berganza sent Alex Pierola and Davys Ramos an email stating that

¹³ Wheeler's post-it notes also recount that Ramirez would work faster when she was being watched than when she was not being watched. This is the same accusation he made about Reyna Sorto. He did not repeat this contention about Ramirez when testifying at the hearing. There is no indication about this in his contemporaneous day planner notes. This casts doubt in my mind as to whether either accusation was true.

¹⁴ Serpas did not testify in this proceeding.

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Wheeler and Wyatt requested that Respondent remove Ramirez because she had no respect for her co-workers. He did not mention anything about scooping material or about Ramirez's work performance in any other respect.

That Berganza did not think Ramirez was a bad employee is established by the fact that he called Davys Ramos, then Respondent's office manager, and asked if Ramirez could be transferred to Respondent's recycling operation at Cockeysville, near Baltimore.¹⁵ Berganza's notes to Davys Ramos and Alex Pierola (GC Exh. 28) say nothing about Ramirez scooping material or any other problem with her work. Berganza only mentioned Ramirez' problems with Martha Serpas and other coworkers as reasons for MES request for her removal, which may have occurred over a month previously.

Davys Ramos called him back and told Berganza that Alex Pierola, Respondent's vice president, rejected this suggestion. There is no evidence in this record as to the reasons Respondent declined to transfer Yasmin Ramirez. She was fired instead.

The Regional Director issues a decision and direction of election on December 13, 2013

On December 13, 2013, the Regional Director for Region 5 issued a decision and direction for election, Case 05-RC-117169. The Regional Director found that an employer-wide bargaining unit, one that included Respondent's recycling employees and construction employees was appropriate. This finding was contrary to Respondent's contentions. The Regional Director also rejected Respondent's contention that a number of Respondent's crew leaders, who had the title of supervisor, were supervisors within the meaning of Section 2(11) of the Act.¹⁶

Respondent discharges Maria Elena Chavez on
December 13, 2013

Maria Elena Chavez worked for Respondent for about 10 years. She was generally considered one of, if not the most productive of Respondent's employees at the Shady Grove recycling center (Tr. 725). It appears that she was generally respected, but that some employees found her to be somewhat intimidating.

In September and October, a number of Respondent's employees were upset about the goggles they had been provided to protect their eyes. These goggles were apparently too big and caused employees to develop headaches. Chavez and Aracely Ramos complained to Berganza about the goggles on September 25. A group of five employees, including Yasmin Ramirez, complained to Berganza about the goggles on another occasion. Chavez also complained directly to MES personnel about the

goggles.

On October 10, Chavez went to Berganza again to complain about the goggles. She said she wanted to talk to Mark Wheeler and David Wyatt about the goggles. Berganza told Chavez she was not permitted to complain about the goggles directly to MES. Chavez insisted on speaking to Wyatt and Wheeler. Berganza called them and they came to his office. Chavez made her complaints about the goggles to Wyatt and Wheeler in Spanish. Berganza translated her complaints into English. Wheeler promised to do something about the goggles.

Later that day Stedson Linkous, Respondent's safety manager, came to the recycling center. Linkous told Chavez that she was prohibited from contacting MES directly and that she would be suspended for seven days unless she apologized for going over the head of her supervisor. Linkous also told Chavez that if did something like this again she would be fired (Tr. 558).¹⁷

Respondent, as a general matter, forbids its employees to take complaints directly to MES. Other employees have also been disciplined pursuant to his rule.¹⁸

On December 10, at the end of the workday, Chavez had a verbal altercation with Juana Rosales, the MES employee working and supervising the recycling line. Someone swept cold dirty water onto Chavez, who was working a level below them. Chavez blamed another employee. Rosales claimed that she swept the water and may have been implying that Chavez was making the story up. Although Chavez was very angry, she did not touch Rosales and Rosales was not afraid that she would do so (Tr. 1364).

At some point Rosales complained to Berganza and the altercation came to the attention of MES Supervisor David Wyatt. Wyatt told Berganza that it was up to Respondent as to whether or not Chavez remained an employee at the Shady Grove recycling center. Neither Wyatt nor Wheeler requested nor recommended that Chavez be removed from the Shady Grove site.¹⁹

Berganza requested Chavez' personnel file from Respondent's main office. He reviewed that file and then decided that Chavez be removed from the site. One of the documents he reviewed was his October 10 memo chastising Chavez for complaining directly to MES about the goggles. Respondent

¹⁷ Linkous did not testify. Chavez's account of this incident is uncontradicted.

¹⁸ In complaint par. 14, the General Counsel alleged that Tomas Berganza violated the Act by instructing employees not to speak to representatives of MES concerning their working conditions and that Respondent violated the Act by threatening them with discipline for doing so. Restricting employees from taking complaints about working conditions outside of their "chain of command" is a clear violation of the Act, *Kinder Care Learning Center*, 299 NLRB 1171 (1990); *Guardsmark, LLC*, 344 NLRB 809-810 (2005) enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007); *Trinity Protection Services*, 357 NLRB 1382 (2011); *Greenwood Trucking*, 283 NLRB 789, 792 (1987); *Central Security Services*, 315 NLRB 239, 253-254 (1994).

¹⁹ Wheeler's testimony at Tr. 723 that he requested Chavez's removal is, as demonstrated by Wyatt's testimony, clearly inaccurate.

¹⁵ Tomas Berganza's effort to have Yasmin Ramirez transferred from Shady Grove to Cockeysville, is somewhat inconsistent with the notion that MES' request that Ramirez be removed from Shady Grove originated with him. However, the unprecedented nature and number of the MES removal requests during the organizing drive leads me to conclude that none of these requests would have been made without the involvement of Respondent.

¹⁶ Respondent appears to have abandoned this contention in this unfair labor practice proceeding. Assuming that it hasn't abandoned it, Respondent failed to establish that any of the crew leaders or discriminatees in this case are statutory supervisors.

then, by more senior management, discharged Chavez.²⁰

December 18, 2013: Tomas Berganza interrogates Respondent's recycling employees

On December 18, Tomas Berganza summoned each of Respondent's recycling employees at Shady Grove to his office. There he interrogated them individually. He asked at least some of them if they had signed union cards and how they intended to vote in the union election. At about the same time, he handed out a packet intimating that if the union won the representation election there would be closer scrutiny of the employees' immigration status.

December 24, 2013 meeting in Baltimore²¹

On December 24, 2013, Maximo Pierola met with construction employees at a worksite in Baltimore. He spoke against union representation and suggested that employees would fare better by negotiating directly with the company. Pierola passed out copies of a page from Mauricio Bautista's testimony at the representation case proceeding. In that testimony Bautista testified that many of Respondent's employees did not have bona fide documentation to work in the United States.

January 10, 2014: Respondent requests Board Review of the Regional Director's December 13, 2013 Decision and Direction for Election

In its request for review, Respondent challenged the Regional Director's determination that an employer-wide bargaining unit was appropriate. It also challenged the Regional Director's determination that its crew leaders were not statutory supervisors.

Respondent warns, then suspends, Jose Amaya for failing to submit daily job reports on time

As mentioned previously, on October 11, 2013, Maximo Pierola called Jose Amaya at work after learning that Amaya and other employees were thinking of suing him. Pierola told Amaya "that before he [Amaya] decided to do the things that he was doing, to think about his family" (Tr. 1141). On November 15, 2013, the Union advised Respondent that Amaya was one of its supporters.

On November 22, 2013, Respondent instructed its superintendents, project managers and crew leaders that at the end of each work day, they must email a report to the company office with the following information: job name, purchase order number, a summary of the work done, pictures of the job before work started and after it finished and the names of the employees who worked on the job (GC Exh. 39).

On December 11, Amaya submitted this report for the prior day somewhat late. Maximo Pierola administered a discipli-

nary warning to Amaya. He issued another such warning on December 16, to Amaya and Roberto Ayala, which he cancelled the next day.

On December 24, Maximo Pierola met with some employees at the Lakeland Recreation Center in Baltimore. He distributed copies of testimony given by Mauricio Bautista at the representation hearing of December 2, implying that many of Respondent's employees did not have bona fide immigration papers. He told employees not to trust Bautista. Pierola then proceeded to ask several employees their reaction to Bautista's testimony. Amaya defended Bautista and Pierola got angry with Amaya.

At this meeting, Pierola also suggested that he and the employees could settle their differences informally—without the Union.

On January 10, 2014 Respondent suspended Amaya for 7 days for his failure to submit daily job reports for work performed January 7–9. Amaya had notified Respondent that his cellphone was not working on January 9. One of Respondent's office secretaries informed all Respondent's managers to contact Mauricio Bautista, who was working with Amaya, instead of Amaya.

Amaya submitted the reports for all three days on January 10 at 3:43 a.m. and minutes thereafter. Amaya worked from 6 a.m. on January 8, until 2:30 a.m. on January 9. He also worked from 6 a.m. on January 9 until 2:30 a.m. on January 10.

No other employee has been suspended for failing to submit the daily job reports or for submitting them late, or was given any other discipline aside from possibly Mauricio Bautista.

Other employees either failed to submit daily reports or submitted them late without being disciplined. These include Norberto Araujo—before Respondent was aware of his joining the FLSA suit or any other protected activity, and Henry Castellan, for whom there is no evidence of any protected activity (GC Exh. 108(b)).

Mandatory employee meeting of February 27, 2014: Mail Ballot Election February 28 to March 14, 2014²²

The Board conducted a mail ballot representation election amongst Respondent's construction and recycling employees between February 28 and March 14, 2014. The day before balloting began, Respondent held a mandatory meeting for entire bargaining unit at its facility at Sligo, Maryland. Two employees, Mauricio Bautista and Domingo Zamora, were not invited to the meeting.

Maximo Pierola encouraged employees to vote against union representation. He described Bautista and Zamora as "rotten apples" and stated that the other employees should not listen to them (Tr. 971). In response to a question, Pierola stated that if the Union kept bothering him, he could either close the compa-

²⁰ The General Counsel contends that Respondent by Tomas Berganza made the decision to remove Maria Chavez from the Shady Grove recycling center without reference to her personnel file. This is not entirely clear. Certainly, Berganza and Alex Pierola were aware of the contents of her personnel file by the time she was terminated on December 13. I find that it was relied upon and moreover, as explained herein, Chavez' removal from the jobsite and termination violated the Act regardless of whether Respondent considered her personnel file.

²¹ Complaint par. 11.

²² The Region's Order of August 1, 2014, consolidating Case 5–CA–131619 with the prior matters alleges that Respondent violated Sec. 8(a)(1) of the Act in several respects at the February 27, 2014 meeting (GC Exh. 1-BB).

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ny, get subcontractors or go bankrupt (Tr. 972).²³

Maximo Pierola also suggested that the employees' grievances could be resolved with resort to private mediation between the company and its employees. Norbert Araujo responded that Maximo Pierola had been promising to resolve employee grievances for the past 25 years, but never did so. Pierola responded that this would change.

The election was conducted as scheduled. However, the ballots were impounded and apparently have not yet been tallied (Tr. 57–58).

Araujo receives a warning for working overtime without permission²⁴

The day after Araujo spoke up at the February 27 meeting, Respondent issued him a written warning for working overtime without permission. Since the October 25 memo was issued, Araujo had worked overtime on numerous occasions without getting permission from Maximo Pierola, Alex Pierola, or Kenneth Brown. He was not disciplined on any of those occasions.

April 2014 conversation between Maximo Pierola and Geremias Berganza²⁵

In February 2014, Geremias Berganza was assigned to work at the MES recycling center in Cockeysville, Maryland. While working there, he sustained an injury to his eye. Afterwards, he performed work at the home of Alex Pierola, Maximo's son. Respondent paid Geremias in cash for this work. Geremias believed he was not paid properly and complained to Union Organizer Sandro Baiza.

In April 2014 Maximo Pierola called Geremias. He told him that he could sue him for defamation and that he would fire him in person.

April 23, 2014: Respondent orders Norbert Araujo to return his company truck (complaint par. 21)

Norbert Araujo signed a consent form to join the FLSA class action suit on February 10, 2014 (GC Exh. 67). He testified that he informed Alex Pierola of that fact on March 6, after Alex Pierola had given him a written warning for working overtime without approval (Tr. 980–983). Araujo's testimony is uncontradicted and therefore credited. Araujo's consent form was filed with the United States District Court on May 5, 2014 (GC Exh. 13).

On April 23, Alex Pierola ordered Araujo to return his company van. The General Counsel alleges that this was done to retaliate against Araujo assumedly for joining the FLSA suit and challenging Maximo Pierola at the February 27, 2014 employee meeting. Prior to April 23, Respondent had provided Araujo with a company van to drive from home to work since 1992. In April 2014 that van was a Ford Araujo had been driving for 4–5 years.

Kenneth Brown testified that he attended a manager's meeting at which it was decided to reduce the number of company

vehicles at the Arlington County courthouse/detention center from 5 to 4. He did not testify when this meeting occurred or why it was determined that Araujo, as opposed to another employee, should lose use of his company truck. It also appears that at some unspecified point in time, Respondent could have reassigned the truck driven by Manuel Medrano, rather than that driven by Araujo (Tr. 1330–1331). In the absence of any explanation for why it was Araujo who lost use of the company vehicle, I find this action was discriminatorily motivated.

Lay-offs and terminations of Nestor Sanchez and Hernan Latapy

Between January 21, 2014 and April 25, 2014 Tito employees Nestor Sanchez and Hernan Latapy were performing painting work at the Washington D.C. Convention Center. Sanchez was one of three employees fired by Respondent in 2012 and then reinstated, in part due to the efforts of Union Organizer Sandro Baiza.

On April 25, 2014, Manual Alarcon informed Norbert Araujo, who had been working in Arlington County, that he was going to be assigned to the Convention Center and that Latapy was going to be sent to paint in Maryland. Nestor Sanchez would be sent to work in Arlington.

Latapy told the D.C. Government supervisor, Juan Jimenez, about the change. Jimenez insisted that Latapy stay at the Convention Center. Respondent insisted on the change. As a result, either the D.C. Government kicked Respondent off the job, or Respondent abandoned the project. Araujo stayed at Arlington and Respondent did not give Latapy or Sanchez any more work as employees of Tito Contractors. In June 2014, Respondent's superintendent, Fermin Rodriguez, told Sanchez that there was plenty of work and suggested that he "fix it with Tito or with the lawyers" (Tr. 887). Kenneth Brown's testimony at transcript 1324–1325 and 1650, as well as Milton Antezana's at transcript 1741–1744, also indicates that Respondent had plenty of work for Latapy and Sanchez in the summer of 2014.

Fermin Rodriguez called Latapy on May 22 or 23, and offered him employment as a subcontractor of Respondent, or as an employee of a subcontractor. Fermin Rodriguez operates a company called RDI Construction which performs some or all of its work pursuant to a subcontract with Respondent. Some employees of Respondent have performed work for RDI, including drywall and plumbing work at Kenmore Middle School in Arlington, Virginia. This record also establishes that individuals who worked as Tito employees prior to the summer of 2014, such as Jose Granados and Angel Alvarado, were removed from Respondent's payroll but continued to perform work for Respondent at other sites, such as the Candlewood School in Maryland, either as subcontractors or employees of a subcontractor (GC Exh. 10(b) and R. Exh. 30).

Latapy declined to work for Respondent as a subcontractor. During this conversation Fermin Rodriguez encouraged Latapy to accept Respondent's offer because after the lawsuit was finished, Maximo Pierola "would fire all those son-of-a-bitches," (Tr. 1088–1089).

On June 25, 2014, Respondent terminated Latapy, ostensibly for refusing to report to work at a job site in Howard County,

²³ One company to which Respondent subcontracts is Z Maxim, which is owned by Maximo Pierola's daughter.

²⁴ This was not pled as a violation of the Act. I assume that Araujo's testimony about this warning was elicited to establish discriminatory animus towards him.

²⁵ Complaint par. 12.

Maryland. There is no evidence that Respondent ordered Latapy to report to such a jobsite. Thus, I credit his testimony that this never happened (Tr. 1095).

New or strictly enforced policy requiring prior high level approval of overtime work in advance

On October 25, 2013, Respondent issued to its construction employees a memorandum stating that, prior to working overtime, employees must get prior approval from either Maximo or Alex Pierola or Kenneth Brown. Alex Pierola testified that Respondent had a policy requiring prior approval for overtime from top management prior to the filing of the FLSA lawsuit. However, he admitted that this policy was not strictly enforced until after the suit was filed (Tr. 1435). There is no evidence that any construction employees had ever been informed that such a policy existed prior to the filing of the FLSA suit.

Discriminatory and/or retaliatory withholding of overtime work

The General Counsel alleges that Respondent has been withholding overtime work from certain employees in a discriminatory manner, and/or to retaliate against them for their protected activities.

The General Counsel and Respondent in their briefs focus on different portions of Respondent's payroll records in arguing whether or not there was any discrimination against the FLSA plaintiffs. Much of this evidence is amorphous. However, I find that Respondent violated the Act in discriminating against the 7 employees who were identified as plaintiffs prior to November 2, 2013, by withholding overtime work from them during the pay period ending on that date. Indeed, the chart attached to Respondent's brief as exhibit A establishes discrimination in assigning or allowing overtime work. Not one of the construction employees who had been named in the initial FLSA complaint (Roberto Ayala, Mauricio Bautista, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, and Domingo Zamora) worked an hour of overtime that pay period.²⁶

General Counsel Exhibit 10 and well as Respondent's chart establishes that many of Respondent's employees, who either had not yet joined the suit, or never joined, worked many hours of overtime during that pay period. These include: Hector Cortez, 42 hours of overtime; Norberto Araujo, 38 hours; Henry Castellon 34 hours; Jose Granados, 33 hours; Leonel Rosales 23 hours; Manuel Medrano, 52 hours; and Manuel Rodriguez 21 hours. There is no explanation in this record for this disparity. Thus, as more fully discussed in the analysis section of this decision, I find it was discriminatorily motivated consistent with the threats from Respondent's managers that the company would discriminate against the plaintiffs.

I leave to compliance whether or not there was discriminatory allocation of overtime in other pay periods. There is evidence that suggests as much. Certain employees, for example, Robert Ayala, a party to the FLSA suit, have experienced a dramatic drop in the number of overtime hours they have worked since the suit was filed. Respondent has not offered any explanation as to why this is so (Tr. 1443-1446, GC Exh. 10, p.

²⁶ Respondent was not aware that Luis Palacios had joined the lawsuit until November 13, 2013.

8).

In July 2014 Respondent prohibited any overtime work at the Arlington County detention center and courthouse. Maximo Pierola and Manual Alarcon instructed Project Superintendent Jorge Ramos that if employees had to work on a Saturday, they would have to take a day off on a weekday (GC Exh. 104).

Respondent discharges Mauricio Bautista²⁷ on August 1, 2014 (Case 05-CA-134285)

Mauricio Bautista worked for Tito Contractors from June 30, 2004, until August 1, 2014. Ever since 2006, he had worked primarily at the Arlington County detention center, almost always as a crew leader. Prior to July 25, 2014, Respondent had never disciplined Bautista.

On July 23, Respondent replaced Bautista as crew leader at Arlington with Jose Amaya, after Bautista refused to sign a document stating his liability if his company cell phone was either lost or damaged. Respondent's superintendent, Jorge Ramos, also found Bautista's crew taking a coffee break on the jobsite when they may not have been authorized to do so.²⁸

On July 24, Amaya informed Bautista that he was being transferred to the Candlewood Elementary School in Rockville, Maryland the next day. According to Respondent's position statement (GC Exh. 202), this was to be a temporary assignment. Bautista was to return to Arlington upon completion of his assignment at Candlewood. Unlike other temporary assignments of this nature, Respondent did not provide Bautista with a company vehicle to get to the Candlewood jobsite.

Maximo Pierola decided to transfer Bautista from Arlington to Candlewood. Jorge Ramos, Respondent's superintendent overseeing the Arlington contracts, did not want Bautista transferred (GC Exh. 206). Ramos was concerned as to whether employees slated to replace Bautista had the proper clearances to work inside the detention center. Manual Alarcon, who apparently outranked Jorge Ramos, insisted that Bautista, not any other employee, go to Candlewood. There is no explanation for this insistence. Bautista was not happy with this transfer since it doubled his commuting time, a fact of which Respondent was most likely aware (GC Exh. 206).

At Candlewood, Respondent's employees were hanging double doors in door frames. Contrary to the suggestions of Respondent, the record establishes that hanging the double doors at Candlewood was not a routine task that any of Respondent's experienced employees could perform. Milton Antezana, Respondent's jobsite superintendent at Candlewood, testified as to how Bautista ended up at his project:

Well, I called the office because we need someone who knows to install the continuing hinge. You cannot make the mistake, because if you made mistakes, that hinge is not good anymore.

And I was specific when I called out to say I need a carpenter who knows. And they told me I got one person who he has a lot of experience in this. And, okay, I say fi-

²⁷ Bautista's full name is Jose Mauricio Lopez Bautista. In Respondent's payroll records (GC Exh. 10(b)), he is listed as Lopez Bautista, Jose M.

²⁸ Jorge Ramos did not testify in this proceeding.

ne, then that will be great for me. So that's when they sent him.

(Tr. 1685–1686; also see Tr. 1690–1691, 1726.)

Antezana also testified that the reason he asked for someone who knew how to install a continuous hinge was that Jose Granados, who worked at the site from January to July made a lot of mistakes (Tr. 1719–1720, 1733).²⁹

In fact Bautista did not have any experience in installing doors with a continuous hinge. There is no evidence that Respondent made any effort to determine whether Bautista or any of its other employees has the experience and skills that Antezana was seeking. After Respondent terminated Bautista, it did not send Antezana a carpenter to replace him (Tr. 1717–1718). This suggests that it was not imperative to transfer Bautista to Candlewood and that the decision to send him to Candlewood was a “set up” designed to provide an excuse to terminate him.³⁰

Bautista did not report to Candlewood on Friday, July 25 as directed. He emailed Superintendent Manual Alarcon at 5:56 a.m. that he was ill and could not report to work. Pursuant to Alarcon's direction, Bautista forwarded his email to the job superintendent, Milton Antezana.

Bautista reported to Candlewood on Monday, July 28. Antezana told him to hang a double door on the building exterior. Bautista told Antezana he had never erected a door like this before. The door has a 79-inch continuous hinge. Bautista had hung doors before, but only the type with several 4 ½ inch hinges. Moreover the double door did not come with a pre-manufactured door frame which corresponding holes already drilled. The installer had to line up the holes in the hinge and drill properly aligned holes into the door frame, before installing the screws through the holes in the hinge and the door frame.

²⁹ Jose Granados worked at Candlewood as late as July 18, 2014, R. Exh. 30. Granados was an employee of Tito Contractors through June 14 and then apparently began working for Respondent as a contractor, rather than as an employee (GC Exh. 10 (b)). Respondent's payroll records show that Granados worked as a Tito employee doing carpentry work at Candlewood (Job # OMD –C-13001 500X050, GC Exh. 102, p. 19) as early as the pay period ending December 28, 2013 and through the pay period ending June 14, 2014. His wage rate was \$15.50 per hour. Bautista's wage rate was \$17 per hour. Angel Alvarado, who performed carpentry work at Candlewood from as early as April 19, through July 2014 was paid \$13 and then \$14 per hour. After the pay period ending July 12, 2014, Alvarado also appears to have worked at Candlewood as a subcontractor because he no longer appears on Respondent's payroll records.

I note that GC Exh. 10 and 10(a) are Respondent's payroll records from pay periods prior to December 14, 2013. GC Exh. 10(b) are the payroll records for the pay period ending December 14, 2013 through August 9, 2014. In the bound exhibits, GC 10 (a) and (b) are in a separate binder from GC Exh. 10, which is for exhibits admitted at the September 11 and 12 sessions. The manner in which they are bound makes it very difficult to read the dates. However, this can be done more easily from the electronic version of the exhibits.

³⁰ There is also no explanation for why other employees, such as Francisco Garza, who had performed carpentry work at Candlewood between December 2013 and March 2014, were not sent to that site in July, instead of Bautista, or to replace Bautista (GC Exh. 10(b)).

On July 28, Bautista and Angel Alvarado hung 2 double doors. The next day, Tuesday, July 29, Bautista hung one double door by himself. At least one of the screws attaching the door hinge to the door frame was not properly aligned. At some point neither of the two chargers for his drills were charged. On Wednesday, when Bautista reported to work, Antezana told him he was not supposed to be there. However, Antezana then asked Bautista if he would help install some door frames. Bautista declined on the grounds that he was not authorized to be at the site that day. Later that day, Bautista spoke to Superintendent Fermin Rodriguez, who offered to seek authorization for Bautista to work that day at Candlewood. Bautista told Fermin that he was already too far from Candlewood and did not want to go back.

On Thursday, July 31, Antezana gave Bautista two doors to hang. After drilling the holes for the screws and installing the screws, Bautista asked Antezana for help in lifting the doors. The screws were not properly aligned and Antezana had difficulty getting one screw out.

Antezana told Bautista that he would have to tell Respondent's office that no doors had been erected that day. He also handed Bautista a warning for being absent on July 25 and not providing a doctor's note.

At 5:30 p.m. on July 31, Manual Alarcon called Bautista and told him that Antezana did not want him working at Candlewood because he didn't know how to hang doors. On August 1, 2014, Respondent's superintendent, Alfonso Caviedes, called Bautista and told him he had been terminated. Caviedes read Bautista a letter signed by Respondent's general manager, Kenneth Brown. The letter stated that Maximo Pierola directed Brown to terminate Bautista because of “his failure to perform basic carpentry duties such as installing door frames and hanging doors at your last job assignment.” (GC Exh. GC 188(a).)

Analysis

III. THE ALLEGED SECTION 8(A)(3) AND (1) VIOLATIONS

General Principles

Each of the alleged violations must be analyzed independently; however, the context in which they occurred must also be considered. Related unfair labor practices are highly relevant in determining both the credibility of witnesses and Respondent's motive with regard to a particular allegation. Unlawful discrimination against one prounion employee based on anti-union animus often supports an inference that the same animus motivated its actions against other prounion employees, *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003). This is particularly true where, as in this case, Respondent's obvious discrimination against several of its prounion employees establishes hostility to unionization and employees' Section 7 rights, See *NLRB v. DBM, Inc.*, 987 F. 2d 540 (8th Cir. 1993); *Reeves Distribution Service*, 223 NLRB 995, 998 (1976).

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must generally make an initial showing that (1) the employee was engaged in protected activity; (2) the employer was aware of the activity; and (3) that animus towards the protected activity was a substantial or motivating reason for the employer's action.

However, it is not always the case that the General Counsel

must establish that an individual discriminatee engaged in union or other protected activity or that a Respondent was aware of an individual employee's union activity. For example, where an employer institutes an unprecedented mass discharge in the context of a union organizing campaign, knowledge of each employee's protected activity is unnecessary for the General Counsel in proving illegal discrimination. Indeed, the knowledge of any of the individual's protected activities may be unnecessary, as in this case, when the employers is aware of union or other protected activity, and has, as in this case, suspicions as to who is involved and bears considerable anti-union animus, *Hunter Douglas, Inc.*, 277 NLRB 1179 (1985), enf. 804 F.2d 808 (3d Cir. 1986). Moreover, in the context of an organizing drive, it is a violation of Section 8(a)(3) to discharge a neutral employee in order to facilitate or cover-up discriminatory conduct against known union supporters, See *Bay Corrugated Container*, 310 NLRB 450, 451 (1993), enf. 12 F. 3d 213 (6th Cir. 1993).

Once the General Counsel makes this initial showing, the burden of persuasion shifts to the Respondent to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity, *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981); *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002).

Respondent makes much of the fact that many of its employees who joined the FLSA suit are not alleged discriminatees. However, it is well established that an employer's failure to take adverse action against all union supporters, or employees who engaged in other protected activity, does not disprove discriminatory motive, otherwise established, for its adverse action against a particular employee, See *NLRB v. Nabors*, 196 F. 2d 272, 276 (5th Cir. 1952); *Master Security Services*, 270 NLRB 543, 552 (1984); *Volair Contractors, Inc.*, 341 NLRB 673, 676 fn. 17 (2004). Moreover, according to Fermin Rodriguez's statement to Hernan Latapy at Tr. 1088-1089 that Maximo Pierola would fire all the SOBs when the lawsuit was over, this may just be a matter of time and opportunity.

The 8(a)(3) allegations involving Respondent's construction employees

All of the alleged discriminatees who worked in Respondent's construction division, Mauricio Bautista, Jose Amaya, Roberto Ayala, Jose Diaz, Geremias Berganza, Hector Delgado, Sabino Diaz, Jose Jimenez, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora engaged in protected activity both by joining in the class action lawsuit against Respondent under the FLSA and by supporting the Union.³¹ Respondent was aware of the protected activity of all of these employees.

Moreover, the record is replete with evidence of Respondent's animus to these employees and their protected activities. For example, Hernan Latapy's testimony that Fermin Rodriguez told him that Respondent's owner, Maximo Pierola "would fire all those son-of-a-bitches," after the lawsuit is

finished, is uncontroverted. Fermin Rodriguez, when called as a witness by the General Counsel, neither denied making this statement nor testified that he had no basis for making the statement. I infer that Maximo Pierola informed Fermin Rodriguez that this is precisely what he intended to do.

On this basis alone, I find that the General Counsel has met his initial showing of discrimination with regard to all the alleged adverse actions. Moreover, largely because Respondent put on no evidence to prove an affirmative defense in many of these instances I find that Respondent violated the Act as alleged. To the extent Respondent has offered an explanation for the adverse actions taken against the alleged discriminatees, I find these explanations to be pretextual.

As to specific employees, the record shows as follows:

Mauricio Bautista: Respondent offered no testimony as to why it decided to terminate Mauricio Bautista as opposed to transferring him back to his job at Arlington which he had performed acceptably for years. Moreover, the record establishes that Respondent treated Bautista disparately than other employees who mishandled a particular assignment. Even with regard to the Candlewood project, it is clear that Jose Granados and others performed shoddy work and were not disciplined at all. At a jobsite in Alexandria, several employees, particularly Francisco Garza, did such poor work that Respondent lost its contract. However, there is no evidence that any of them was disciplined. Finally, this record makes it very clear that Maximo Pierola's animus toward the protected activity of all employees was particularly focused on the "rotten apples, spoiling the whole bunch," Bautista and Domingo Zamora.

Hernan Latapy and Nestor Sanchez: There is absolutely no evidence that Respondent did not have work for Latapy and Sanchez. Indeed, the record strongly suggests just the opposite.

Norberto Araujo: There is no evidence as to why a company vehicle was taken away from Araujo as opposed to other employees the Arlington project. Moreover the timing of this action strongly suggests discriminatory motive.

Jose Amaya: Respondent's disparate treatment of Amaya's filing job reports late as opposed to its inaction with regard to other employees who also filed the reports late strongly suggests discriminatory motive.

As to the withholding of overtime from the alleged discriminatees: the uncontradicted evidence shows that Respondent told these employees it would discriminate against them and that it did so.

I find that Respondent violated the Act as alleged with regard to each of these employees.

By restricting the overtime of its employees, and instituting a policy requiring the advance approval of overtime by Respondent's top management, Respondent violated Section 8(a)(3) and (1)

Respondent has a facially appealing defense to the allegation that it violated the Act by instituting the policy requiring top

³¹ Concertedly filing and maintaining a lawsuit under the FLSA is concerted activity protected by the NLRA, *U Ocean Palace Pavilion, Inc.* 345 NLRB 1162 (2005).

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management approval of all overtime. Of course, Respondent had to insure that it was in compliance with the FLSA regardless of whether or not it complied with this statute before its employees sued it. However, under Board law, specifically *Wright Line*, 251 NLRB 1083 (1980), it is not enough for an employer to present a legitimate reason for its actions. Once, as in this case, where the General Counsel has made an initial showing that discrimination and or retaliation for protected activity was a motivating factor in an adverse employment action, the respondent employer must establish that it would have taken the steps it took regardless of the protected activity.

The Act does not allow an employer to substitute “good reasons” for the “real reasons.” In order to meet its burden, once the General Counsel has made his initial showing of discrimination, it is not enough for the Respondent to show that it *could* have taken action for a non-discriminatory reason, it must establish that it in fact took the action for such legitimate purpose, *Structural Container Industries*, 304 NLRB 729,730 (1991); *Yellow Ambulance Service*, 342 NLRB 804, 805–806 (2004); Also see *Watsonville Register-Pajaronian*, 327 NLRB 957–961 (1999) [compliance with the FLSA did not necessitate the employer taking the actions it took in violation of Section 8(a)(5)].

Here, there is no question that Respondent bore tremendous animus towards the protected activity of its employees, and indeed took discriminatory action against some of the employees who participated in the FLSA lawsuit. Respondent has put forth one possible way of complying with the FLSA. It has put forth no evidence as to why it chose this manner of complying with that statute, as opposed to, for instance, paying them the wages they were entitled to under the FLSA.

Alleged Independent 8(a)(1) violations regarding the construction employees

The test of whether a statement violates Section 8(a)(1) is whether Respondent’s conduct would reasonably tend to interfere with, threaten, or coerce employees in the exercise of their Section 7 rights, *Alliance Steel Products*, 340 NLRB 495 (2003); *Southwestern Bell Telephone Co.*, 251 NLRB 625, 631–632 (1980). I find that the following statements by Respondent are violative under this standard:

Superintendent Fermin Rodriguez’ statements to Domingo Zamora, Geremias Berganza, and others in October 2013 that employees who participated in the FLSA lawsuit would not be allowed to work overtime.

Owner Maximo Pierola’s statements to Jose Amaya on October 11, 2013, that he should think about his family before taking legal action against Respondent;

Owner Maximo Pierola’s statements to Geremias Berganza on October 11, that employees were stabbing him in the back by filing the FLSA lawsuit and that he did not want backstabbers in his company and that there were thousands of jobs elsewhere.

Maximo Pierola’s statements to employees on December 24, 2013, indicating that their workplace issues could be resolved if they eschewed union representation.

Owner Maximo Pierola’s February 27, 2014, characterization of Mauricio Bautista and Domingo Zamora as “rotten apples” which was based on their union and other protected activity.

ity.

Owner Pierola’s threat on February 27 to close his company or subcontract out most or all of his work.

Maximo Pierola’s statement to Geremias Berganza that he could sue him for defamation and would fire him in person.

Fermin Rodriguez’ statement to Nestor Sanchez indicating that he could get work if he “fixed it” with Tito or his lawyers. This was an attempt to coerce Sanchez from withdrawing from the lawsuit.

Fermin Rodriguez’ statement to Hernan Latapy that Maximo Pierola would fire all the SOBs when the lawsuit was over.

Legal Analysis with regard to the 5 discharges of employees at the Shady Grove Recycling Center

In an approximately 6-week period from October 30, 2013, to December 13, 2013, Respondent discharged 5 of its employees at the Shady Grove recycling center. These discharges occurred during the Union’s organizing campaign and all five engaged in union activity. Four of these employees were removed from that site at the request of MES, which had the contractual right to request their removal. The number of discharges and requests for removal of employees by MES was unprecedented.

The record shows that MES rarely requested that Respondent remove an employee prior to October 30. Mark Wheeler had been MES’ operations manager at Shady Grove for 11 years. He could specifically recall requesting the removal of only one employee, Sandra Melgar between 2010 and October 30, 2013.³² The discriminatees in this case were treated in a much different manner than was Melgar. Wheeler’s day planner shows that he became concerned about her performance on January 7, 2013. He noted further complaints about Melgar’s performance on February 18, 2013, but did not ask for her replacement until April 18, 2013.

Wheeler’s conduct with regard to Keila Diaz in July 2011 also offers a sharp contrast with the conduct of Wyatt and Wheeler with regard to the discriminatees. Diaz was found sleeping in her car during work time on July 5, 2011. He emailed Berganza’s predecessor that this type of behavior would not be tolerated, but did not request her removal (R. Exh. 2).

There is no evidence that David Wyatt, Wheeler’s superior, had ever requested that Respondent remove an employee prior to October 30, 2013. As set forth below, I find that MES’ request for the removal of 4 of Respondent’s employees during a union organizing drive was not a coincidence.

It is true that during the period in question, MES had concerns about productivity at the Shady Grove facility. In part (GC Exh. 14). The 5 discriminatees were not the low producers on those tests. Indeed, Maria Ellen Chavez was the highest producer and Reyna Sorto and Aracely Ramos were also among the high producers. There is no convincing nondiscriminatory explanation for why Mark Wheeler started monitoring Reyna

³² Andrea Monroy abandoned her job on January 18, 2013 (GC Exh. 82). There is no evidence that MES requested her removal. Moreover, Monroy received three warnings for misconduct, while some of the discriminatees in this case were removed from the site and discharged without warning.

Sorto's and Yasmin Ramirez' productivity as opposed to the employees whose productivity was low even when they knew they were being tested, such Sylvia Sandino, Miriam Mejia, and Adriana Villavicencio.³³ There is absolutely no non-discriminatory correlation between MES' productivity concerns and its requests for the removal of the discriminatees.³⁴

There is no evidence that Respondent positively knew of the union activities of any of the discriminatees until November 15, 2013, when the Union identified them in a letter to Respondent. By that time Maria Sanchez and Aracely Ramos had already been discharged. Reyna Sorto may also have been discharged before Respondent knew for sure that she supported the Union. Respondent had been informed of Yasmin Ramirez' and Maria Ellen Chavez' support for the Union before it discharged them.

As stated earlier, Tomas Berganza, Respondent's supervisor at Shady Grove knew of union activity and at least suspected that all five discriminatees supported the Union before they were discharged. Also as discussed at the outset of this decision, I find that Berganza began operating as Respondent's agent in opposing union organizing before Maria Sanchez's discharge on October 30, 2013.

Consistent with the *Wright Line* analysis above, I find that MES would not have requested the removal of Maria Sanchez, Aracely Ramos, Reyna Sorto, and Yasmin Ramirez³⁵ but for the involvement of Respondent. I find that this involvement was motivated by Respondent's animus towards the known or suspected union activity and/or other protected activity (complaining about the goggles).

Respondent has not shown that MES would have, independently, without its involvement, have sought the removal of the five alleged discriminatees from the Shady Grove jobsite. This record shows that all the information that Mark Wheeler and David Wyatt, both of whom speak little or no Spanish, based their removal requests, came from Tomas Berganza. Thus, each of these requests was influenced by Respondent's antiunion animus.

I find that the Respondent's termination of these employees, the removal of Maria Chavez from the Shady Grove site and her termination were also motivated at least in part by the discriminatees' union and other protected activity (e.g. Chavez' complaining directly to MES about the goggles).

³³ Mejia and Villavicencio are identified as union supporters in the Union's November 14, 2013 letter to Respondent.

³⁴ There is a correlation, however, between Respondent's awareness of the FLSA suit and MES' monitoring of Yasmin Ramirez. I find that the impetus for this monitoring came from Respondent and was related to her husband's participation in the FLSA suit. Discrimination against an employee's family members in such circumstances violates the Act, *PJAX*, 307 NLRB 1201, 1203-1205 (1992), enfd. 993 F.2d 378 (3d Cir. 1993).

³⁵ Tomas Berganza's effort to have Yasmin Ramirez transferred from Shady Grove to Cockeysville, is somewhat inconsistent with the notion that MES request that Ramirez be removed from Shady Grove originated by him. However, the unprecedented nature and number of the MES removal requests during the organizing drive leads me to conclude that none of these requests may have made without the involvement of Respondent.

REMEDY

The Respondent, having discriminatorily discharged five of its recycling employees, must offer them reinstatement and notify the Maryland Department of Environmental Services in writing that it has no objection to their reinstatement to their former positions or substantially equivalent positions at the Shady Grove recycling center. Respondent must also make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee(s) for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Don Chavas d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁶

ORDER

The Respondent, Tito Contractors, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, laying-off or otherwise discriminating against any employee for supporting International Union of Painters and Allied Trades, District Council 51, or any other union, or for engaging in other protected concerted activity, including participating in a class action lawsuit.

(b) Coercively interrogating any employee about the union support or union activities of that employee or any other employee.

(c) Coercing employees regarding their participation in protected concerted activity such as participating in a class action lawsuit.

(d) Promising benefits to employees if they refrain from engaging in union or other protected activity, such as a class action lawsuit.

(e) Threatening to withhold overtime from employees who engage in protected activity, including participating in a class action lawsuit.

(f) Withholding overtime from employees who participate in a class action lawsuit.

(g) Initiating a policy requiring high-level management advance approval of overtime work in response to protected activity, or strictly enforcing such a policy which had not been enforced prior to the filing of a collective-action lawsuit or other protected activity.

(h) Maintaining and enforcing a rule which prohibits em-

³⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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ployees from taking complaints about their working conditions outside their "chain of command."

(i) Taking any action to encourage employees of the Maryland Environmental Services Department to request removal of employees from a jobsite in retaliation for any suspected or actual union or other protected concerted activity.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of the Board's Order notify the Maryland Environmental Services Department in writing that it has no objection to the reinstatement of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and request their return to the Shady Grove (Derwood), Maryland facility.

(c) Within 14 days from the date of the Board's Order, offer Mauricio Bautista, Hernan Latapy, and Nestor Sanchez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Mauricio Bautista, Hernan Latapy, Nestor Sanchez, and Jose Amaya whole for any loss of earnings and other benefits suffered as a result of the discrimination against them as specified in the remedy portion of this decision.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, removal from the Shady Grove jobsite and discipline of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez and within 3 days thereafter notify them in writing that this has been done and that their discharges and illegal discipline and removals will not be used against them in any way.

(f) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges or other discipline or adverse action concerning Mauricio Bautista, Hernan Latapy, Nestor Sanchez, and Jose Amaya and within 3 days thereafter notify them in writing that this has been done and that their discharges and illegal discipline and lay-offs will not be used against them in any way.

(g) Within 14 days from the date of the Board's Order, restore to Norberto Araujo the use of a company vehicle comparable to the vehicle he drove prior to April 2013.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause

shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its Washington, D.C. office and the Shady Grove (Derwood), Maryland recycling facility, copies of the attached notice marked "Appendix"³⁷ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on the intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, as its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 11, 2014.

(j) Within 14 days after service by the Region, hold a meeting or meetings during working hours, which will be scheduled to ensure the widest possible attendance of employees, at which time the attached notices marked "Appendix" is to be read to its employees by a Board agent in English, Spanish and any other language spoken by more than three employees in the presence of Respondent's President/Chief Executive Office or highest ranking human resources official.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., November 4, 2014.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

³⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge, lay-off or otherwise discriminate against any of you for supporting International Union of Painters and Allied Trades, District Council 51, or any other union, or for engaging in other protected concerted activity, including participating in a class action lawsuit.

WE WILL NOT coercively question you about your union support or activities or the protected activities of you or other employees.

WE WILL NOT promise you benefits if you refrain from union or other protected concerted activity, such as participating in a class action lawsuit.

WE WILL NOT otherwise coerce you with regard to your union or other protected activities by (1) threatening to withhold overtime work; (2) actually withholding overtime work; or (3) instituting or strictly enforcing a rule requiring you to seek high-level management approval before working overtime.

WE WILL NOT coerce, restrain, or interfere with you communicating with our clients or other third parties about your wages, hours or other terms and conditions of employment.

WE WILL NOT discipline you or threaten to discipline you for doing so.

WE WILL NOT do anything to encourage employees of the Maryland Environmental Services Department, or any other entity to request your removal from a job or jobsite in retaliation for any suspected or actual union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our rule that prohibits you from speaking to representatives of the Maryland Environmental Services Department, or any other entity regarding your wages, hours and terms and conditions of employment.

WE WILL, within 14 days from the date of this Order, offer full reinstatement to Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL request in writing that the Maryland Environmental Services Department reinstate Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez to their former jobs at the Shady Grove (Derwood), Maryland recycling station and state that we have no objection to their being returned to these positions.

WE WILL, within 14 days from the date of this Order, offer full reinstatement to Mauricio Bautista, Hernan Latapy, and Nestor Sanchez to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to

their seniority or any other rights or privileges previously enjoyed.

WE WILL make Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, and Maria Chavez whole for any loss of earnings and other benefits resulting from their discharges and other discrimination, less any net interim earnings, plus interest compounded daily.

WE WILL make Mauricio Bautista, Hernan Latapy, Nestor Sanchez, and Jose Amaya whole for any loss of earnings and other benefits resulting from their discharges and other discrimination, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge or layoffs and discipline of Maria Sanchez, Aracely Ramos, Reyna Sorto, Yasmin Ramirez, Maria Chavez, Mauricio Bautista, Hernan Latapy, Nestor Sanchez, and Jose Amaya and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges, layoffs and discipline will not be used against them in any way.

WE WILL NOT restore to Norberto Araujo the use of a company vehicle comparable to the vehicle he drove prior to April 2013.

TITO CONTRACTORS, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/05-CA-119008 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 05-CA-119008

TITO CONTRACTORS, INC.,
Respondent

And

THE INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADES,
DISTRICT COUNCIL 51, AFL-CIO,
Charging Party.

Place: Washington, D.C.
Date: 08-04-14
Volume: 1
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1 answer?

2 A. Yes, ma'am.

3 Q. And did you recognize the voice on the other end?

4 A. It was the same voice that was talking like a few
5 minutes later -- I mean before.

6 Q. Okay. And what happened during your conversation?

7 A. Well, I introduced myself to Tito, and he said he know
8 me, and we talk a little bit. And he told me, I don't want
9 to you recording this conversation. I say, I not recording
10 any conversation. I hope you not doing it too.

11 And I told him, you know, I like to help him to resolve
12 the problem, you know, he got with Mr. Palacios. He told me
13 the Union don't help him for nothing; we only help the
14 workers. And I told him, you know, I like to explain to him
15 a little bit about, you know, the benefits. This thing can
16 be good for him.

17 He told me he don't want to hear nothing. He don't want
18 the Union in his company, period.

19 Q. I see. Now, Mr. Baiza, are you familiar with someone by
20 the name of Jose Mauricio Bautista?

21 A. Yes, ma'am.

22 Q. And who is Mr. Bautista?

23 A. Mr. Mauricio Bautista is one of the employee for the
24 construction side for Mr. Tito Contractors.

25 Q. Okay. So to avoid any type of -- let me go back here.

1 Do you refer to Mr. Bautista by any other name?

2 A. Yes. Everybody call him Mauricio.

3 Q. All right. Now, to avoid any type of confusion of the
4 record, I'll just refer to Mr. Bautista as Mauricio.

5 A. Thank you.

6 Q. All right. Now, have you ever had any communications
7 with Mauricio?

8 A. Yes, ma'am.

9 Q. And when was the first time that you had communications
10 with him?

11 A. Mr. Mauricio called me in June 2013. And he expressed
12 to, you know, his concern about, you know, he work for Tito
13 Contractor, and he like to meet me because he say he like to
14 talk to me. He got a lot of issues in that company.

15 Q. Okay. Did you ever meet with him?

16 A. Yes, ma'am.

17 Q. And when did you meet with him?

18 A. I meet with him in July 2013, in my office.

19 Q. I see. Now, did you meet with him alone?

20 A. No. He come in with one of the previous guys I would
21 helper. His name was Nestor Sanchez.

22 Q. Okay. Now, generally, what subjects did you discuss
23 during your meeting with Mauricio?

24 A. Well, you know, usually I let the workers to present
25 their concern, and he told me, you know, he was working a lot

1 of overtime, and with Tito Contractors. And he told me he
2 never get paid overtime. Also, he been working a lot, in a
3 lot of public work, government job. He never get the right
4 wages, too.

5 Q. I see. Now, did you advise him that you could do
6 anything for him?

7 A. Yes.

8 Q. And what could you do?

9 A. I told him I going to represent him, you know, I mean, I
10 like to represent you. And I like to see if you can get more
11 people to come in to my office, and I going to be able to
12 represent all of you.

13 Q. I see. Now, following this meeting, did you ever meet
14 with Mauricio again?

15 A. Yes, ma'am.

16 Q. When?

17 A. The following month in August, I was meeting with him.

18 Q. I see. And where did you meet?

19 A. In my office.

20 Q. And did you meet with him alone?

21 A. No. He brought more people. He brought about five more
22 people with him.

23 Q. And who were they?

24 A. I remember the names. One of the names is Jose Jimenez,
25 Jose Amaya, Geremias Berganza, and -- Geremias Berganza,

1 Domingo Zamora, and another guy, I couldn't remember his
2 name, but it was five guys coming with him.

3 Q. I see. Now, did you have an understanding as to whether
4 those additional five guys were also Tito employees?

5 A. Yes, ma'am. I saw them, you know, with the Tito T-
6 shirt, and also they got badges with the place they work, and
7 they said Tito Contractor.

8 Q. I see. Now, could you just briefly describe what
9 happened during your meeting with these gentlemen?

10 A. Well, when I see, you know, a group, I mean, five, six
11 guys, you know, a pretty good group for me, I just give them
12 the authorization cards to sign it. And I told them I going
13 to represent them, and everybody signed the authorization
14 cards.

15 Q. Okay. Now, did you tell them that you could -- did you
16 advise them of anything you could do concerning their
17 complaints about overtime?

18 A. Yes. When I see everybody have the same issues, I told
19 them, you know, I going to help them because I have pro bono
20 lawyers in Washington, D.C. who can help them. And I told
21 them I going to set up appointment and to put it together
22 with them to, they can present all the evidence they got.

23 Q. I see. Now, do you know whether they actually met with
24 any lawyers?

25 A. Yes, they did.

1 Q. And were you present during that meeting?

2 A. Yes, ma'am.

3 Q. Okay. And when was that meeting?

4 A. It happened in September in my office.

5 Q. Okay. September of what year?

6 A. September 2013.

7 Q. I see. And about how many employees were at that
8 meeting?

9 A. That day come about 10, 12 employees come into that
10 meeting.

11 Q. I see. I want to direct your attention to Tito's
12 recycling operations.

13 A. Okay.

14 Q. What is your understanding of Tito's recycling
15 operations?

16 A. I understand, you know, Tito is provide manpower to
17 Maryland Environmental Service, they call it MES, in
18 Montgomery County.

19 Q. Okay. And what does MES stand for?

20 A. Maryland Environmental Service.

21 Q. I see. When did you first learn about Tito's recycling
22 operations?

23 A. This was early in October. Mr. Jose Jimenez working
24 within a construction site, and his wife work in the recycle
25 center in Montgomery County.

1 Q. I see. And did he identify his wife for you?

2 A. Yes. He told me they have a problem in the --

3 Q. Did he -- excuse me, did he identify his wife for you?

4 A. Yes. Yes. He's told me his wife --

5 MS. JANDRAIN: Objection. He's about to testify as to
6 hearsay.

7 JUDGE AMCHAN: Well, he's going to -- no, he's going to
8 give the -- she asked him about his wife's name. I mean --

9 MS. JANDRAIN: Well, he provided that, and then he was
10 going to say Mr. Jimenez said --

11 MS. SILAS: He's not -- the witness hasn't -- not. I'm
12 just going as to his state of mind.

13 JUDGE AMCHAN: Well, I mean, I --

14 MS. SILAS: If he understood it.

15 JUDGE AMCHAN: I guess it is hearsay. But I'm going to
16 allow it. We'll see if it's a real issue.

17 MS. SILAS: Okay.

18 Q. BY MS. SILAS: Did he identify his wife?

19 A. Yes.

20 Q. Who did you understand his wife to be?

21 A. Ms. Yasmin Ramirez.

22 Q. Thank you. Now, after Mr. -- after you learned of
23 Ms. Yasmin Ramirez, did you ever have any communication with
24 Tito's recycling employees?

25 A. Yes, ma'am.

1 Q. And when was the first time you had communications with
2 them?

3 A. It was in October, when one of the workers called me
4 from the recycle.

5 Q. Okay. Who called you?

6 A. Her name is Reyna Sorto.

7 Q. Okay. And, generally, what did you discuss when
8 Ms. Sorto called you?

9 A. She told me she have a problem, you know, with the
10 holidays, vacation, and also that she told me she have a
11 serious problem with some type of goggles they was using on
12 the job at that time.

13 Q. I see. Now, how did your conversation with her end?

14 A. Well, I told her, you know, I can't speak too much by
15 the phone, but I like to set up an appointment in my office.
16 She can come on over and explain to me a little better. And
17 she agreed to come in to my office. She asked me my address,
18 and I gave her the address where is my office located.

19 Q. Okay. Did you, in fact, meet with her?

20 A. Yes, ma'am.

21 Q. Okay. And when did you meet with her?

22 A. I meet with her in the end of the October, you know, she
23 coming over to my office.

24 Q. Okay. Did you say the end of October?

25 A. In October. In the month October. I don't remember

1 exactly what, the time.

2 Q. I see. Now, did you meet with her alone?

3 A. No. She come in with another four workers. Total
4 people coming that day to my office was five people.

5 Q. Okay. And who were they?

6 A. First name was like I mentioned, Reyna Sorto,
7 Elena Maria Chavez, Yasmin Ramirez, Elizabeth Lemus, and
8 Yasmin Ramos -- I'm sorry, Aracely Ramos.

9 Q. All right. Now, generally, what subjects did you
10 discuss during your meeting with these employees?

11 A. We discuss about problem, you know, they have with -- on
12 the job with the goggles, because they was using some type of
13 goggles they wasn't comfortable to work in that, in the area
14 they was working.

15 JUDGE AMCHAN: I'm not sure I understand the word.

16 They're working with some kind of --

17 THE WITNESS: Goggles, that they --

18 JUDGE AMCHAN: Oh, goggles. Fine.

19 THE WITNESS: Big goggles, yes.

20 Q. BY MS. SILAS: Now, during your meeting with these
21 ladies, did you discuss any particular, any managers?

22 A. Yes, we do.

23 Q. And who did you discuss?

24 A. We discuss about, you know, the supervisor. You know, I
25 mean, they have a problem with the supervisor, you know. He

1 was very hard with their, all of them. They have a problem
2 every time they go to the bathroom, they was checking by the
3 radio. Also, when they go drinking water, they have a
4 problem to go drinking water, too.

5 Q. I see.

6 A. And about overtime, and no vacation, no holidays. And
7 they told me they'd get paid overtime because it good, but no
8 holidays, no vacation, no sick leave, no nothing, and they
9 was working for like, 8, 10, 12 years, and never see any
10 vacation, any holidays --

11 Q. I see.

12 A. -- anything.

13 Q. Now, did they identify who the supervisor was?

14 A. Yes. They mentioned the name.

15 Q. Okay. And who was that?

16 A. They mentioned Mr. Tomas Berganza.

17 Q. All right. Now, following this meeting, did you meet
18 with any of these women again?

19 A. Yes.

20 Q. When was the next time that you met with them?

21 A. It was in early November, we meet again, you know.

22 Q. Okay. And where did you meet?

23 A. In my office again.

24 Q. All right. And about how many employees did you meet
25 with that time?

1 A. It was three new -- they brought three new employees.

2 But I mean, the first five, they don't come out, only three
3 of the first five and three new ones.

4 Q. I see. I see. Now, following that second meeting, did
5 you meet for a third time?

6 A. Yes, ma'am.

7 Q. And when was that?

8 A. They told me they going to talk a lot of people because
9 everybody needed help it, and I told them, you know, to give
10 me a close place I can come on over and meet with them. And
11 they told me is a Wendy's close to the recycle center, and
12 they told me that's a good place to, we can have a meeting in
13 there. And that's -- and I agreed to.

14 Q. Okay. So my question was, when did you meet with them?

15 A. It was in November.

16 Q. Okay.

17 A. 2013.

18 Q. Okay. And at that meeting, did you discuss any
19 particular individuals?

20 A. Yes.

21 Q. Members of management?

22 A. Yes. Everybody come out. You know, all the workers,
23 they want to talk about the supervisor, you know. The guy
24 just, you know, I mean, it was get very, I mean, nasty with
25 them. And it was something, you know, they don't -- they

1 have a problem to go to the bathroom, to drinking water.

2 And --

3 Q. I see. What supervisor would that person be?

4 A. Mr. Tomas Berganza.

5 Q. All right. Now, --

6 JUDGE AMCHAN: What's his last name?

7 THE WITNESS: Berganza.

8 Q. BY MS. SILAS: Now, up to that point, had you ever met
9 Tomas Berganza?

10 A. Yes.

11 Q. Okay. You had met him up to that point?

12 A. No, no. Not -- to that point, I would never met him.

13 Q. Okay. Now, following that, did you ever meet him?

14 A. Yes, ma'am.

15 Q. All right. And when was the first time that you met
16 him?

17 A. I meet Mr. Tomas Berganza in October 18, 2013.

18 Q. I see. And where did you meet with him?

19 A. I meet with him in the -- close to the -- I mean, in the
20 restaurant calling Irene's Pupusas.

21 Q. Okay. And where is that?

22 A. It located in Glenville, Maryland.

23 Q. And did the two of you meet alone?

24 A. No. It was another person present in there.

25 Q. Okay. Who?

1 A. It was Mr. Mauricio Bautista.

2 Q. I see. And what happened during your meeting with
3 Mr. Berganza?

4 A. Well, I introduced myself, you know, and I give him my
5 business card. And I told him, you know, I represent the
6 workers, and I might as well see if he can be able to working
7 with me and if he sign the authorization card. He told me
8 yes, I don't have no problem. I can sign the authorization
9 card.

10 Q. I see. Now, during your meeting -- all right. So just
11 for clarification, did Mr. Berganza actually sign an
12 authorization card?

13 A. He did sign the authorization card.

14 Q. Okay. Now, during your meeting with Mr. Berganza -- and
15 for clarification just for, to avoid confusion on the record
16 because we have several people here with the same last names,
17 I'm just going to refer to Tomas Berganza as just Tomas,
18 okay?

19 A. It's okay.

20 Q. All right. Now, during your meeting with Tomas, did you
21 ask him to do anything in particular?

22 A. Yes. I asked for a favor.

23 Q. What did you ask him?

24 A. I asked for a favor, you know, that he can help me to
25 sign the four authorization card, for four workers. They

1 were -- he -- it was -- those four workers, they working very
2 close to him, and he told me, tell me the names. And I give
3 him the names, and he told me, I don't have no problem. I
4 can help you to sign those authorization cards.

5 Q. I see. And did you discuss returning the cards at all?

6 A. Yes. The day I was meet with him it was on Friday. He
7 told me he would, not going to be possible to do nothing in
8 the weekend, but he's going to be able to provide to me the
9 following Monday.

10 Q. I see. Now, did you speak with Tomas the following
11 Monday?

12 A. Yes. I called him.

13 Q. Okay. And, well, what happened during your call?

14 A. Well, I called Mr. Tomas, you know, I coming close to
15 the area we supposed to be meet. And I call him to see if he
16 have my authorization cards ready.

17 Q. Okay. Now, when you called him, were you alone?

18 A. No.

19 Q. Who was with you?

20 A. Ms. Maria Guerra. She was with me --

21 Q. Okay.

22 A. -- that day.

23 Q. And where were the two of you?

24 A. We was in the parking lot, and she was inside my car
25 with her daughter.

1 Q. Okay. Were you inside of your car?

2 A. I mean, she was -- she coming in to my car, and brought
3 her daughter with her, and she was sitting in the back, and
4 the daughter in the car and --

5 Q. Okay. And where were you?

6 A. In the apartment complex close to where she live.

7 Q. Where were you, physically, you, yourself?

8 A. Oh, I was sitting in the driver side, in my car.

9 Q. I see. Now, during your call with Tomas, did you
10 activate any type of special device on your phone?

11 A. Yes, I did.

12 Q. And what was that?

13 A. When I call him, you know, because Ms. Maria was right
14 there with me and I like to have a witness, in case, you
15 know, how these things going to work it out, I put the phone
16 to speaker. And Ms. Maria was right there. She heard all
17 the conversation I had with Mr. Tomas Berganza.

18 Q. I see. Now, what was that conversation?

19 A. Well, I call -- first thing I ask him if he got the
20 card. He said no, it was impossible because it was a busy
21 day, and he don't have the cards, you know, for me. And I
22 said, when it's going to be possible? He said, I like to ask
23 you something before I give you those cards back.

24 I said, what do you want to ask me? He said, I like to
25 know if you mention some names, if you have authorization

1 card for those person I going to mention names. I said, go
2 ahead, and he mentioned me the names. The names he was
3 mention me, he mention me Raquel Sanchez, Maria Raquel
4 Sanchez, he mention me Elizabeth Lemus, Reyna Sorto,
5 Yasmin Ramirez, and Aracely Ramos.

6 Q. I see. Now, did you confirm any of those names for him?

7 A. No. I told him that's private. I not going to tell
8 him, you know, I mean, who signed, who not signed.

9 Q. And did he say why he was asking about these
10 individuals?

11 A. Yes. He told me the reason he asked me that is because
12 those women always complained about him.

13 Q. I see. Now, following this conversation with Tomas, did
14 you ever speak to him again?

15 A. No.

16 Q. Now, Mr. Baiza, I want to direct your attention to the
17 period of October 24 through November 5.

18 A. Okay.

19 Q. Okay. Did you engage in any organizing efforts with
20 respect to Tito's employees during that period?

21 A. No, ma'am.

22 Q. Okay. Why not?

23 A. Because I went out of the country. I take vacations at
24 that time.

25 Q. I see. And did anyone fill in for you while you were

1 away?

2 A. Yes. I put in charge of Mr. James Coats to follow up,
3 you know, what I started.

4 Q. Okay. Follow up with what?

5 A. Follow up, you know, to get in touch with Mr. Tomas to
6 see if he can get the cards back from him.

7 Q. I see. Now, upon your return from vacation, did anyone
8 update you about the status of the organizing --

9 A. Yes, ma'am.

10 Q. -- of Tito employees?

11 A. Yes, ma'am.

12 Q. And what was your understanding as to the update?

13 A. I understand when I come back from my country, they told
14 me Tito Contractors was holding overtime to everybody, all
15 the construction people. And also I end up to find out, you
16 know, two girls from the recycle center, they get fired, too.

17 Q. I see.

18 A. And the name -- those two girls, Aracely Ramos and
19 Maria Raquel Sanchez.

20 Q. I see. Now, upon learning that information, did you
21 take any particular action with respect to Tito Contractors?

22 A. Yes, ma'am.

23 Q. What did you do?

24 A. We -- I mean, I make up a letter, you know, write a
25 letter to, mail it to Tito Contractor. And I wrote all the

1 Q. Now, besides overtime wages, are you aware of any other
2 wage issues involving Mr. Geremias Berganza?

3 A. Yes, ma'am.

4 Q. What is the issue?

5 A. In April 2014, Mr. Geremias called me, and he told me
6 Tito Contractor pay him cash, and he don't want to get cash
7 money. He want to have the deduction in his paycheck because
8 he don't want to take cash.

9 Q. I see. And did you take any action with respect to the
10 concern brought to your attention?

11 A. Yes, I did. I filed charges with the NLRB in this
12 office in Washington, D.C.

13 MS. SILAS: Okay, thank you. Just one minute.

14 JUDGE AMCHAN: Okay.

15 Q. BY MS. SILAS: Now, Mr. Baiza, you testified earlier
16 that you had met with recycling employees in November --

17 A. Yes, ma'am.

18 Q. -- at the Union office?

19 A. Right.

20 Q. Is that correct?

21 A. Yes, ma'am.

22 Q. Did you ever meet with these employees in October 2013?

23 A. Yes, ma'am.

24 Q. About how many times?

25 A. Total was three times, two times.

1 Q. Okay. And can you -- which is it, two or three?

2 A. Two times in my office, and one time in a Wendy's.

3 Q. I see. And do you know the specific dates of each of
4 those times?

5 A. I remember one was in October 20, but I don't recall the
6 rest -- I mean, the exactly day I was meeting with them in
7 there.

8 MS. SILAS: I see. No further questions.

9 MS. JANDRAIN: Your Honor, can we have a -- take a break
10 so we can have a copy of the statement and the other Jencks
11 material?

12 JUDGE AMCHAN: Okay.

13 MS. SILAS: Your Honor, we do have a statement by
14 Mr. Baiza that was in a case unrelated to this, not the same
15 employer, in no way related. We would ask that you inspect
16 that in camera to determine if we should turn that over.

17 JUDGE AMCHAN: Are you interested in it?

18 MS. JANDRAIN: Well, she's bringing it up, so it must be
19 something interesting about it, but --

20 MS. SILAS: I have an obligation to bring it up.

21 MS. JANDRAIN: So I -- sure, yes. I don't know what
22 it's about. I haven't seen it, but --

23 MS. SILAS: Your Honor, it's irrelevant to this
24 proceeding.

25 JUDGE AMCHAN: Well, I guess I'll --

1 anti-union statements, correct?

2 A. Don't know.

3 MS. SILAS: Objection. Beyond the scope of direct.

4 JUDGE AMCHAN: Overruled. He said no.

5 Q. BY MS. JANDRAIN: You didn't have any concerns that he
6 was making anti-union statements?

7 A. Don't know.

8 Q. Do you remember any of the employees telling you that he
9 made anti-union statements?

10 A. No, ma'am.

11 Q. Okay.

12 JUDGE AMCHAN: Make sure that your answers are audible.
13 Otherwise the --

14 THE WITNESS: Okay.

15 JUDGE AMCHAN: -- recorder won't pick them up.

16 Q. BY MS. JANDRAIN: Can you repeat your response to the
17 last?

18 A. I'm sorry?

19 Q. Did any of the employees tell you that he made anti-
20 union statements?

21 MS. SILAS: Objection. When? This is ambiguous.

22 JUDGE AMCHAN: Okay, well, they said at any time.

23 THE WITNESS: Nobody told me anything.

24 Q. BY MS. JANDRAIN: Okay. And when you provided the
25 statement to the NLRB agent on November 27, 2013, you didn't

1 A. He told me he's with the Union, and any help, I can ask
2 and he can help me.

3 Q. Okay. And you asked him to get help signing additional
4 authorization cards, correct?

5 A. I did. Yes, that's correct.

6 Q. Okay. And when you asked him to do that, you did so
7 because you thought he supported the Union, correct?

8 A. That's correct.

9 Q. Okay. You wouldn't have asked him otherwise, right?

10 A. Of course not.

11 Q. Okay. And you gave him the names of four employees to
12 approach about signing authorization cards, correct?

13 A. That's correct.

14 Q. And how did you select the four individuals whose names
15 you gave him?

16 A. I called the names, you know, to them because according
17 to the people working inside, the other females helped me.
18 They told me who was close with Tomas, and that's only Tomas
19 can help me, because they did not want to talk to them. And
20 that's the -- come out to my attention, too. Tomas can be
21 the right guy to help me that day.

22 And I told him, you know, I give you the name, four
23 names, to see if he is, be able to help me to get
24 authorization cards signed with those four workers.

25 Q. So you said that some of the women you had been talking

1 A. That's correct.

2 Q. And if you look down, kind of in the middle of the
3 letter, it identifies approximately 35 employees of Tito
4 Contractors; do you see that?

5 A. That's correct.

6 Q. And the first paragraph says that there's an organizing
7 committee which consists of present and former employees,
8 correct?

9 A. Yes.

10 JUDGE AMCHAN: All right. I don't think -- I mean, if
11 you just are getting into, to see that Mr. Berganza's name is
12 amongst the 35, I can see that. You don't have to ask him.

13 MS. JANDRAIN: Okay.

14 Q. BY MS. JANDRAIN: He was listed because he supported the
15 Union at that point in time, correct?

16 A. I believe.

17 Q. Okay. Now, this letter is dated November 14, 2013; do
18 you see that?

19 A. Yes.

20 Q. And you said you showed up at Tito's office in the early
21 morning of November 15, correct?

22 A. That's correct.

23 Q. Now, you don't know whether they had received this
24 letter at the time you showed up, do you?

25 A. To be honest with you, the same time we arrive there,

1 the post office show up there in the same time. And I don't
2 know if it was bring it, delivered that letter or not. To be
3 honest with you, I don't know.

4 Q. Okay. Well, do you see on the second to last page of
5 Exhibit 3, there is tracking information?

6 A. Page 3?

7 Q. Yes.

8 A. Yes.

9 Q. And do you see at the top where it says it was delivered
10 at 11:25 a.m.?

11 JUDGE AMCHAN: And that's what it says.

12 MS. JANDRAIN: Okay.

13 THE WITNESS: Yes, that's what it say.

14 Q. BY MS. JANDRAIN: Okay. Now, you said you had a meeting
15 at MES with David Wyatt and an individual by the name of Tom
16 on December 3, correct?

17 A. That's correct.

18 Q. Okay. And at that meeting you discussed Mr. Berganza,
19 correct?

20 A. I was there to, concerned about the three girls that get
21 fired from the Tito Contractors.

22 Q. Okay. Do you remember telling Mr. Wyatt and Tom -- I'm
23 sorry, I don't know his last name, do you remember telling
24 them that Tomas had signed an authorization card?

25 A. I believe I told them, yes.

1 Q. Okay. And do you remember telling them that he was the
2 leader of the organizing effort at the recycling center?

3 A. I don't quite remember, but probably I said because, you
4 know, he was a -- to me he was a leader because he helped me
5 to sign those authorization cards.

6 Q. Okay. So as of December 3, 2013, you considered him a
7 leader of the organizing effort; is that correct?

8 A. I would say yes, because, I mean, he helped to sign
9 those cards.

10 Q. Okay. Now, earlier in your direct testimony, I think
11 you said that you began the organizing campaign in June of
12 2013. Do you remember testifying to that?

13 A. Yes, I say that.

14 Q. Okay. Isn't it true that actually you started in August
15 of 2013?

16 A. No. I received a phone call in, from Mr. Bautista in
17 June, to ask me for help.

18 Q. But I'm asking about your organizing campaign.

19 A. Yes, I mean, that's organizing. When somebody ask me
20 for help, I mean, my intention is to organize that particular
21 person who calling me.

22 Q. Okay. Can you look at your statement from November 27
23 again, please? The very first page. The very first page,
24 sorry, the cover page there. And if you look at line 4, you
25 stated, "I started the campaign to organize in August of

1 2013." Do you see that?

2 A. Yes, I see this in the front, with it, said, 12/1, I
3 said it to, campaign organizing August of 2013.

4 Q. At the time you made that statement, that was a correct
5 and accurate statement, correct?

6 A. It was correct, yes.

7 MS. JANDRAIN: We have no further questions, Your Honor.
8 Can I just note that, you know, I don't how we're kind of
9 handling questioning of witnesses, but he's obviously subject
10 to recall once we receive some of the documents that the
11 Union's going to produce.

12 JUDGE AMCHAN: I mean, is he under subpoena?

13 MR. GODOY: Yes.

14 MS. JANDRAIN: Yes he is.

15 JUDGE AMCHAN: Okay. All right. Do you have anything
16 on redirect?

17 MS. SILAS: Yes.

18 REDIRECT EXAMINATION

19 Q. BY MS. SILAS: Now, Mr. Baiza, Ms. Jandrain
20 characterized your conversation with Kenneth Brown in 2012 as
21 ending on a cordial note. Do you understand what cordial
22 means?

23 MS. JANDRAIN: That was -- actually that was a
24 conversation with Mr. Pierola.

25 MS. SILAS: Okay.

1 Q. BY MS. SILAS: Your conversation with Maximo Pierola.
2 When she characterized that conversation as ending on a
3 cordial note, do you understand what cordial means?

4 A. To be honest with you, no.

5 Q. Okay. So when you said yes to that question, did you
6 understand what you were saying yes to?

7 A. Yes. Yes, I do. I'm sorry. Yes.

8 Q. Okay. So you know what cordial means?

9 A. Yes.

10 Q. What does it mean?

11 A. I mean, it's -- we going to end up to, you know, to set
12 up in a habitable, you know, in a, making a kind of
13 arrangement, you know, to be, discuss the situation, whatever
14 situation can be.

15 Q. Okay. Did you understand that given what Mr. Pierola
16 said during that conversation, that he was friendly toward
17 the Union?

18 A. No.

19 Q. Okay. So did you understand that his -- that he had a
20 cordial attitude toward the Union?

21 MR. GREENBAUM: Well, she didn't ask that. They
22 weren't --

23 THE WITNESS: No.

24 MS. SILAS: Okay.

25 JUDGE AMCHAN: I'll -- she's getting him to admit that

1 there wasn't any hostility expressed towards him at all.

2 MS. SILAS: Well, may I ask that?

3 JUDGE AMCHAN: Well, no. I mean, I think you're
4 going --

5 MS. SILAS: All right. I'll move on.

6 JUDGE AMCHAN: He didn't say that he was, you know --

7 MR. GREENBAUM: You're putting words in --

8 JUDGE AMCHAN: -- favorably disposed to the Union. I
9 mean, they --

10 MS. SILAS: Okay.

11 JUDGE AMCHAN: They weren't hostile.

12 Q. BY MS. SILAS: Did your conversation end on a friendly
13 note?

14 A. No.

15 Q. Okay. Thank you. Now, Ms. Jandrain characterized
16 Tomas' attitude about the Union as enthusiastic. Was
17 Mr. Berganza very excited about the Union?

18 A. He looked very excited that day when I meet with him.

19 Q. Okay. And you spoke to him a few days after that day,
20 right?

21 A. The October 21, yes.

22 Q. Right. That was your testimony. And what was his
23 attitude during that call?

24 A. Nice, like the same as the first day.

25 Q. Okay.

1 A. It kind of surprised me when he asked me the other
2 questions.

3 Q. Okay. So when he asked you the other questions, you
4 testified earlier that you refused to give the information.
5 What was his attitude?

6 A. In the end, it sounds to me, he want to play games, you
7 know, with me. And that's when I would start to make my
8 decision to, told my boss, you know, I don't want to talk to
9 this guy anymore because, you know, he's sound like he want
10 to play, and I'm not a player. I'm serious business, and I
11 was serious to him the first day I was met him.

12 Q. Now, did he have the same level of enthusiasm, to use
13 Ms. Jandrain's word, that he had that prior Friday?

14 A. No.

15 Q. Okay. Was it more or less?

16 A. Because, be honest with you, I don't look him, but the
17 way he was sounds, it was not like how happy he was that day.

18 Q. Okay.

19 A. Yes. And everything was by phone.

20 Q. Okay. So he -- if he didn't sound happy, what did he
21 sound like? What was the tone of his voice?

22 A. He sound like he still with the Union, he want to help.
23 You know, that's how I feel like when he was -- when I was
24 talk to him.

25 Q. On the Monday?

1 A. On Monday, October 21, yes.

2 Q. I see. Now, you testified just a moment ago that you
3 considered Tomas to be a leader, okay. What does it take to
4 be a leader in the Union?

5 JUDGE AMCHAN: Where are you going? I mean --

6 MS. SILAS: I just want --

7 JUDGE AMCHAN: If I recall, he told the people from MES
8 as late as early December that he considered Mr. Berganza to
9 be pro-union. So I don't know where we're -- I mean --

10 MS. SILAS: I think they -- I think --

11 JUDGE AMCHAN: I mean I don't --

12 MS. SILAS: -- by Respondent's questioning, he's trying
13 to show that Berganza was actually an enthusiastic leader of
14 the Union when, Your Honor, that according to my
15 understanding of this witness' testimony, that wasn't the
16 case.

17 JUDGE AMCHAN: Okay. I have no -- you know, I haven't
18 heard most of the testimony as to what Mr. Berganza's role in
19 this case is, but it certainly doesn't sound to me like he
20 thought that Mr. Berganza had changed his mind about the
21 Union --

22 MS. SILAS: I see.

23 JUDGE AMCHAN: -- as of the meeting with the MES people
24 in early December. So I don't know. I think we're spinning
25 our wheels.

1 MS. SILAS: All right. I'll move on from that.

2 Q. BY MS. SILAS: Now, beginning in -- Ms. Jandrain pointed
3 out that your affidavit talks about starting an all-out
4 campaign, organizing campaign in August 2013, right? Is
5 there a difference between just talking to an employee about
6 organizing and having a full-fledged organizing campaign?

7 A. To be honest with you, I cannot make a clarify in that.
8 You know, I was very impressive from the first time I help
9 with the guys in 2012. You know, from that time, I have in
10 my mind, you know, I want to organize Tito because he have so
11 many issues with the workers, you know, because I asked those
12 three individuals, you know, I mean, how they treat diversive
13 people. They told me, everybody treat the same.

14 Q. Now, when you met with Mr. Mauricio in June of 2013, did
15 you ask him to take any action with respect to the Union?

16 A. Yes, I did.

17 Q. What did you tell him to do?

18 A. I told him, you know, I want to -- if has more people
19 want to do the same thing he want to do, please engage me
20 with more people.

21 Q. I see. Did you consider that organizing?

22 A. Yes, ma'am.

23 MS. SILAS: I see. Thank you.

24 JUDGE AMCHAN: Okay. Are you done with --

25 MS. SILAS: Yes.

1 JUDGE AMCHAN: -- this witness for the time being?

2 MS. SILAS: For the time being.

3 JUDGE AMCHAN: Okay. You may step down.

4 MS. SILAS: He's not released, though, forever.

5 JUDGE AMCHAN: What?

6 MS. SILAS: He's not released until later, but he's
7 still under the power of our subpoena.

8 JUDGE AMCHAN: Well, I think they said that he -- they
9 said they subpoenaed him also --

10 MS. SILAS: Yes.

11 JUDGE AMCHAN: So, you may be recalled, but you can step
12 down for now.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 MR. GODOY: Your Honor, if we could have a few minutes
16 to get the next witness?

17 JUDGE AMCHAN: Sure. We're off the record.

18 (Off the record from 3:00 p.m. to 3:08 p.m.)

19 (Whereupon,

20 MARIA AYUSO

21 was duly sworn to interpret the questions from English into
22 Spanish and the answers from Spanish into English to the best
23 of her knowledge and ability.)

24 JUDGE AMCHAN: Okay. And then I need to swear in the
25 witness.

1 THE INTERPRETER: Okay.

2 (Whereupon,

3 ELIZABETH LEMUS

4 was called as a witness by and on behalf of the General
5 Counsel and, after being first duly sworn, was examined and
6 testified, through an interpreter, as follows:)

7 JUDGE AMCHAN: Okay. You can sit down. Okay, so with
8 the translation, I think if you can really try to keep --
9 make your questions short. You'll ask the question in
10 English. She'll translate. The witness will answer in
11 Spanish, and then she will translate the answer in English.

12 MR. GODOY: Yes, Your Honor.

13 JUDGE AMCHAN: But I think if you go, you have long
14 questions, you're going to drive the interpreter to
15 distraction.

16 MR. GODOY: Understood, Your Honor.

17 DIRECT EXAMINATION

18 Q. BY MR. GODOY: Ms. Lemus, can you please state your full
19 name for the record?

20 A. Yes. My name is Elizabeth Lemus.

21 Q. And can you please spell your first and last name?

22 A. Elizabeth is E-l-i-z-a-b-e-t-h, and the last name is
23 L-e-m-u-s.

24 Q. And, Ms. Lemus, are you appearing here today pursuant to
25 a U.S. Government subpoena?

1 A. Yes, that is correct.

2 Q. Ms. Lemus, are you currently employed?

3 A. Yes.

4 Q. And who is your employer?

5 A. Tito Contractors.

6 Q. And where do you work?

7 A. In Montgomery County, the recycling.

8 Q. How long have you worked there?

9 A. Twelve years.

10 Q. And have you worked those 12 years at the recycling
11 center?

12 A. Yes.

13 Q. And what do you do at the recycling center?

14 A. Recycling, separating what's recyclable and separating
15 what's garbage.

16 Q. And do you work at a particular station?

17 A. Yes. Right now I'm working at the pre-sort, where the
18 garbage bag opens and you separate everything.

19 Q. Okay. And are there other stations beyond the pre-sort?

20 A. Yes. There is a station, the light sort station, which
21 is the plastic one. There is the glass, which is for glass,
22 and there's 34 and 37.

23 Q. And is that light sort? No, no. Is the station called
24 light sort?

25 A. Light sort is the one, the plastic one.

1 Q. And do you have a supervisor at the Montgomery County
2 Recycling Center?

3 A. Yes.

4 Q. And who is he?

5 A. Tomas Berganza.

6 Q. How long have you worked for Mr. Berganza?

7 A. Four years.

8 Q. And he's -- has he been your supervisor for that length
9 of time?

10 A. Yes.

11 Q. Okay. Now, I want to ask you about the Painters Union.
12 Are you familiar with the Painters Union?

13 A. Yes.

14 Q. Okay. And when did you become familiar with the Union?

15 A. Mid-October 2013.

16 Q. Okay. And how did you become aware of the Union?

17 A. Through a coworker.

18 Q. Do you recall who it was?

19 A. Yes. Yasmin Ramirez.

20 Q. And now Ms. Lemus, did you attend any union meetings or
21 meetings held by the Union?

22 A. Yes.

23 Q. And when -- what was the first one that you attended?

24 A. It was on a Friday, mid-October.

25 Q. Was this October 2013?

1 A. Yes.

2 Q. Okay. And where was that meeting held; do you recall?

3 A. Yes. That was in Annapolis.

4 Q. Where in Annapolis?

5 A. In one of the Union's office.

6 Q. Do you recall who you attended the meeting with?

7 A. With Yasmin Ramirez. Aracely Ramos was present, and
8 Reyna Sorto. Yes.

9 Q. And did you attend another meeting after the first?

10 A. Yes.

11 Q. And when was that meeting?

12 A. That was on a Tuesday after work, at a Wendy's near my
13 job.

14 Q. I see. And who did you attend the meeting with?

15 A. I went by myself, but there were like 10 other people.

16 Q. Okay. And do you recall if Aracely Ramos was there?

17 A. Yes. Aracely Ramos, Reyna Sorto, and Raquel Sanchez
18 were there.

19 Q. Do you recall if Maria Elena Chavez was present?

20 THE INTERPRETER: I'm sorry, may I request a repetition.

21 MR. GODOY: Does she recall if Maria Elena Chavez was
22 present?

23 THE WITNESS: Yes.

24 Q. BY MR. GODOY: I apologize if you've said this. Do you
25 remember if Aracely Ramos was also present?

1 A. Yes.

2 Q. Okay. And this second meeting, do you recall when it
3 took place?

4 A. A week after the first one that took place in Annapolis.

5 Q. I see. And was it also the month of October?

6 A. Yes.

7 Q. Okay. And did you meet with any officials at the second
8 meeting?

9 A. Yes.

10 Q. Do you remember who they were?

11 A. Mr. Baiza and Mr. James.

12 Q. And were these officials present at the first meeting?

13 A. Yes.

14 Q. Okay. And did you attend any other meeting in the month
15 of October?

16 A. No.

17 Q. Okay. Now, Ms. Lemus, I want to direct your attention
18 to November 14, 2014. Did you work on that day?

19 A. Yes.

20 Q. At any moment during the day, while you were working,
21 did Tomas Berganza approach you to talk about the Union?

22 A. Yes.

23 Q. And what did he say?

24 A. He approached me and he told me that I was working too
25 slow, to hurry up and work faster because the Union could not

1 that. And I think it may be relevant. If they're trying to
2 show that there were nondiscriminatory reasons for getting
3 rid of Ms. Chavez, this may be relevant.

4 MS. JANDRAIN: I'm sorry. I don't know --

5 JUDGE AMCHAN: I don't know if she answered.

6 THE INTERPRETER: She didn't answer.

7 MS. JANDRAIN: I'm sorry?

8 THE INTERPRETER: She didn't answer it yet.

9 MS. JANDRAIN: Can you ask the question again?

10 THE INTERPRETER: May you repeat the question, please?

11 JUDGE AMCHAN: Well, I think she asked --

12 MS. JANDRAIN: I don't remember.

13 JUDGE AMCHAN: Well, yes. You asked if --

14 MS. JANDRAIN: Oh, have you written a letter.

15 JUDGE AMCHAN: -- Ms. Lemus had written a letter to
16 Tito, complaining about Ms. Chavez.

17 MS. JANDRAIN: Right.

18 THE WITNESS: Yes, that is true. But it's supposed
19 to -- we are supposed to be talking about what's happening
20 right now, not about what happened before.

21 Q. BY MS. JANDRAIN: Well, you complained that Ms. Chavez
22 insulted you, correct?

23 A. Yes, correct.

24 Q. And you complained that she would laugh at you every
25 time you encountered her, correct?

1 A. Correct.

2 Q. Sometimes she pushed you, correct?

3 A. Yes, that is correct.

4 Q. And you told Tito that you were afraid of her, correct?

5 A. Yes.

6 Q. And you also said that there's various other people that
7 are also in the same situation as you, correct?

8 A. At that time, yes.

9 MS. JANDRAIN: I have no further questions.

10 JUDGE AMCHAN: Well, when was this -- when did you write
11 a letter to Tito about Maria Elena Chavez?

12 THE WITNESS: I don't remember. It was around five or
13 four years.

14 MS. JANDRAIN: I have a -- I mean, I have a copy of the
15 letter, if Your Honor will allow us to introduce it into
16 evidence. I know it's their case right now, but -- or we can
17 use it to refresh her recollection.

18 JUDGE AMCHAN: Well, I mean, all I'm interested in is
19 when the letter was written.

20 MR. GODOY: No, I have no objection to the letter being
21 admitted, Your Honor.

22 MS. JANDRAIN: Okay.

23 MR. GODOY: Let me see it though. I --

24 MS. JANDRAIN: Sure. I don't know if I have enough
25 copies for Your Honor, but --

1 A. Yes.

2 Q. What did Tomas say?

3 A. If you have the five people that I'm about to mention, I
4 will help you with all the people that is already inside.

5 Q. Okay. And did he mention names?

6 A. Yes.

7 Q. Do you recall who he mentioned?

8 A. Yes.

9 JUDGE AMCHAN: I'm losing who the he, you know, when --

10 MR. GODOY: Tomas, I'm sorry.

11 Q. BY MR. GODOY: Did Tomas give the names of the employees
12 he wanted to know?

13 A. Yes.

14 Q. And just to clarify, what did Tomas want to know about
15 the ladies he was going to ask about?

16 A. That it means where Sandro had the ladies that he was
17 about to mention, he had them already, that he was going to
18 help them with the ones that were already inside. And then
19 he mentioned the names.

20 Q. What was -- he had what?

21 A. Oh, he actually had Yasmin Rodriguez, Reyna Sorto,
22 Mariela Hernandez --

23 THE INTERPRETER: Mariela no?

24 Q. BY MR. GODOY: That's -- let's start over.

25 A. If he had Yasmin Ramirez, Maria Elena Chavez,

1 Reyna Sorto, Aracely Ramos, and Elizabeth Lemus.

2 Q. Okay.

3 A. I'll help you with the rest, with the ones that are
4 inside, he said.

5 Q. And did Sandro respond?

6 A. Sandro said that he couldn't give that information.

7 Q. Okay. And after that, did the call end? Did Tomas
8 agree to -- what happened after that?

9 A. No. Tomas said, you know, Sandro, that I'm 100 percent
10 with the Union, and I have already signed the card, he said.

11 Q. Okay. Did he say anything else?

12 A. No.

13 JUDGE AMCHAN: Okay. I'm little confused as to who --
14 somebody gave five names to somebody else. Am I the only one
15 that doesn't know who gave the names to who?

16 MR. GODOY: All right. It was a little rough. But I
17 can clarify, Your Honor, if you'd like.

18 MS. JANDRAIN: That's fine. I think I understand, but
19 you can go ahead.

20 MR. GODOY: Yes. I'll clarify the record.

21 Q. BY MR. GODOY: Ms. Guerra, who asked -- was it Sandro
22 who asked Tomas to sign or to get employees to sign cards?

23 A. No. He only said to help him with those people only.

24 Q. So when Sandro called Tomas, Sandro asked him to help
25 him get employees to sign cards?

1 A. But he only said four only.

2 Q. Four names? Okay. And after he said the names, what
3 did -- am I correct that Tomas responded by saying I'll help
4 you, but only if you give me the five people?

5 A. That is Sandro already had them with a card, if they
6 have already signed.

7 Q. So Tomas asked Sandro if Maria Elena Chavez had signed
8 the card; is that right?

9 A. I don't know.

10 Q. No, no. I'm sorry. It was the name of -- did Sandro --
11 did Tomas ask Sandro if Maria Elena Chavez had signed the
12 card?

13 A. Yes. He asked about the five people. If they have
14 already signed the cards, he was going to help him with the
15 rest inside.

16 Q. And the other employee that he asked about was
17 Yasmin Ramirez; is that right?

18 A. Yes.

19 Q. The other is Aracely Ramos?

20 A. Yes.

21 Q. The other is Reyna Sorto?

22 A. Yes.

23 Q. The other one is Elizabeth Lemus?

24 A. Yes.

25 Q. Okay. And how long did the call last?

1 A. Around five to seven minutes.

2 JUDGE AMCHAN: So, if I'm clear on this, is this
3 correct? Tomas asked Sandro for some names, and the first
4 person that named Maria Elena Chavez, Reyna Sorto Garcia,
5 Aracely, and Yasmin was Sandro identified --

6 MR. GODOY: No, Your Honor, it's the other way. Sandro
7 called Tomas --

8 JUDGE AMCHAN: Yes.

9 MR. GODOY: -- to see if Tomas had been able to solicit
10 cards from three -- or four employees, according to
11 Ms. Guerra.

12 MS. SILAS: None of whom are the five.

13 MR. GODOY: None of whom are the five.

14 MS. SILAS: That Tomas inquired about.

15 MR. GODOY: This relates to employees that Tomas had
16 agreed to solicit cards from.

17 JUDGE AMCHAN: Right.

18 MR. GODOY: And Sandro -- I'm sorry, Tomas responded
19 that they didn't want to sign. And then he said -- this is
20 Tomas, asked, said I will get you these employees if you give
21 me the names of those employees who have already --

22 JUDGE AMCHAN: Yes, that's what I said. The
23 significance of this testimony, from your perspective, is
24 that in this conversation, Sandro identifies to Tomas --

25 MR. GODOY: No.

1 JUDGE AMCHAN: No?

2 MR. GODOY: Tomas specifically asks the names of
3 employees, asking if they've signed.

4 MS. JANDRAIN: And Sandro says I can't tell you that.

5 MR. GODOY: So Tomas is asking, has Maria Chavez signed,
6 has Aracely signed -- Aracely Ramos signed, has
7 Yasmin Ramirez signed, has Reyna Sorto signed, has
8 Elizabeth Lemus signed. He's asking specific names.

9 JUDGE AMCHAN: Okay. So Tomas is asking about specific
10 names, and Sandro says, I can't tell you that.

11 MR. GODOY: That's right.

12 JUDGE AMCHAN: Do we all agree on that?

13 MS. JANDRAIN: Yes.

14 JUDGE AMCHAN: I find it very confusing, but I think I'm
15 okay now.

16 MR. GREENBAUM: Well, I think we agree that that's the
17 testimony.

18 JUDGE AMCHAN: Right. Not that it happened.

19 MR. GREENBAUM: I don't think we agree, yes.

20 JUDGE AMCHAN: Right, not that it happened that way.

21 MR. GREENBAUM: Right.

22 JUDGE AMCHAN: I understand.

23 Q. BY MR. GODOY: Now, Ms. Guerra, I want to direct your
24 attention now to December 18 of 2013. Did you work on that
25 day?

1 A. Yes.

2 Q. And did Tomas ask you, during that day or in the days
3 either before or after, some date before or after
4 December 18, did he ask you about the Union?

5 A. Yes.

6 Q. Okay. And can you tell me what happened on that day?

7 A. He called through the radio to the person in charge who
8 had the radio, and he said Maria, go to the office; Tomas
9 wants you there.

10 Q. And who had the radio that day?

11 A. I don't remember.

12 Q. Was this an MES employee?

13 A. No. It was a coworker from Tito Contractors because the
14 person didn't show up on that day.

15 Q. Okay. And did you go to Tomas' office?

16 A. Yes.

17 Q. Okay. And when you went to the office, was he there?

18 A. Yes.

19 Q. Was anybody else there?

20 A. No.

21 Q. Okay. And what, if anything, did you talk about?

22 A. I arrived and I say, yes, Tomas, I'm here. And he said
23 okay. He had the computer turned on.

24 Q. Okay. And then what happened?

25 A. Then he said Maria, Maria. I say yes. Tell me, did you

1 sign a card from the Union? And I asked why.

2 Q. Did he respond?

3 A. And he asked me, have you signed a card from the Union,
4 and I asked why. And he said, is it -- do you need me to say
5 it? And he said yes.

6 Q. Okay. After he said yes, what else was said?

7 A. As far as I know, I think that you also filled it out,
8 and he said yes, and but they already took me out, he said.

9 Q. Okay. And then what else was said?

10 A. Because I am a supervisor, I cannot be in the Union.

11 Q. Okay. Did he say anything else?

12 A. Yes. He wanted the name of the person who gave it to
13 me.

14 Q. Gave you what, the card?

15 A. Yes, the card. And then I said if it was needed for me
16 to say the name.

17 Q. And what did he say?

18 A. He didn't say anything else.

19 Q. Okay. And after this, did he ask you anything else?

20 A. Then he said, you know, that they're going to take five
21 percent of the check.

22 Q. Did he say anything else?

23 A. And then I answered, no, I don't know.

24 Q. And did he say anything after that?

25 A. Yes. And then he asked, do you know how much money

1 Mr. Sandro Baiza makes? And I said, no, I don't know.

2 Q. And after that, was anything else said?

3 A. He said he makes \$93,000 and some change a year.

4 Q. And did the meeting end after that, or did it continue?

5 A. No, it continued. And then he asked me, do you know how
6 much money James makes? And I said no. And then he said, he
7 makes \$94,000 and change.

8 Q. Okay. Anything else said?

9 A. And then he asked me, who are you going to vote for,
10 Tito or the Union. And I said, I don't know.

11 Q. Did he say anything when you said this?

12 A. And then he repeated the same word again, Tito or Union,
13 and I say I don't know.

14 Q. Any response?

15 A. No, he didn't say anything else. He pressed something
16 on the computer. I don't know what it was, but he pressed
17 something on the computer, and that was it. That was the end
18 of the conversation.

19 Q. And about how long were you in Tomas' office?

20 A. Around five to seven minutes.

21 Q. And do you know if you were the only employee that he
22 called into his office that day?

23 A. No.

24 Q. How do you know this?

25 A. All my coworkers that work around me, they went there.

1 Q. One by one or in a group?

2 A. One by one.

3 Q. Now, Ms. Guerra, I want to next talk to you about --

4 JUDGE AMCHAN: I'm sorry. This is December 18?

5 MR. GODOY: Your Honor, this was December 18, yes, on or
6 about December 18.

7 Q. BY MR. GODOY: Now, Ms. Guerra, I want to talk to you
8 about what occurred on or about December 17 through
9 December 20, 2013. Did you work on those days? I know you
10 said you worked on the 18th.

11 A. Yes.

12 Q. And at any point during these dates, did Tomas talk
13 about the Union or the National Labor Relations Board?

14 A. During those dates, he gave us a packet.

15 Q. And when did this take place?

16 A. Excuse me?

17 Q. When did this happen? What time of day?

18 A. Leaving the plant.

19 Q. Okay. So where was he when he handed these -- this
20 packet out?

21 A. In his office.

22 Q. Okay. Why did you go to his office?

23 THE INTERPRETER: I'm sorry?

24 Q. BY MR. GODOY: Why did you go to his office?

25 A. We were all there.

1 Q. So was this a meeting?

2 A. It was a small meeting to give us the packets.

3 Q. And what was the packet?

4 A. Talking about the Union, to see what was more convenient
5 to us, the Union or Tito.

6 Q. So wait. When he -- before he gave the packet, or after
7 he gave the packet, did he say anything?

8 A. He first gave us the packet, and then he said that Tito
9 sent it to us, to all the employees, all of us.

10 Q. Okay. And then what did he say?

11 A. He said, here's a packet for each one of you. Read it
12 and see what's more convenient to you, Tito or the Union.
13 But if the Union wins, then they're going to start going into
14 the company and checking your papers.

15 MR. GODOY: All right. That -- concern on an issue.

16 JUDGE AMCHAN: I don't think she said that ICE --

17 MR. GODOY: You don't think she was -- ICE was missing.

18 JUDGE AMCHAN: Right.

19 Q. MR. GODOY: So if we could have -- can you just repeat
20 what you just said?

21 A. Okay. If the Union wins, then ICE will go into the
22 office, and they will check the papers. And then we don't
23 have papers, and then we all go out.

24 Q. And what do you mean by go out? What did he mean? Did
25 he say what he meant?

1 A. He meant that if the Union wins, he will -- they will
2 only want people with papers, and we don't have papers, so we
3 will all go out, and we will lose our jobs.

4 Q. Okay. Did he say anything else?

5 A. He said to read it, and the next day or the day after,
6 to go to the office and tell them what we have decided.

7 Q. And tell who what you had decided? What -- so he wanted
8 you to tell who?

9 A. Himself, Tomas.

10 Q. Okay. And was anything else said during the meeting?

11 A. No, that's all.

12 Q. Okay. And what about the packet? Did he say anything
13 about the packet?

14 A. Yes, but I didn't pay attention to it, because there
15 were missing pages. It was from 3 to 78, so I didn't pay
16 attention to it.

17 (General Counsel's Exhibit 43 marked for identification.)

18 Q. BY MR. GODOY: I'm going to hand you what's been marked
19 for identification as General Counsel Exhibit 43.

20 Ms. Guerra, could you please tell me what that is?

21 A. Yes.

22 Q. And what is it, Ms. Guerra?

23 A. This the packet that Mr. Tomas gave to us.

24 MR. GODOY: Your Honor, I would move for the admission
25 of General Counsel Exhibit 43 into the record.

1 A. From Monday through Thursday.

2 Q. And why didn't you see him on Fridays?

3 A. He didn't go to work.

4 Q. Okay. Now, did you ever speak to him?

5 A. Yes.

6 Q. Okay. And did you ever speak to him about your working
7 conditions?

8 A. No.

9 Q. Why not?

10 A. Because Mr. Tomas Berganza told us that we were
11 forbidden for speaking about anything related to work.

12 Q. Okay. And did he say that with respect to talking to
13 MES?

14 A. Yes.

15 Q. Okay. And when did Tomas say that to you?

16 A. He told me on June 2013.

17 Q. Now, Ms. Ramos, are you familiar with the Painters
18 Union?

19 A. Yes.

20 Q. Okay. And are you familiar with Sandro Baiza?

21 A. Yes.

22 Q. And who is Mr. Baiza?

23 A. The workers organizer.

24 Q. And are you familiar with someone named James Coats?

25 A. Yes.

1 Q. And who is he?

2 A. He is a union representative also --

3 Q. Now, when you were working at the Shady Grove plant,
4 were the employees there trying to form a union?

5 A. Yes.

6 Q. And were you involved in those activities?

7 A. Yes.

8 Q. And when did employees at the Shady Grove plant first
9 start trying to form a union?

10 A. The first week of October.

11 Q. Okay. What year?

12 A. 2013.

13 Q. And how did you learn about the Union?

14 THE INTERPRETER: I'm sorry. May I request repetition
15 from the --

16 THE WITNESS: A coworker, Yasmin Ramirez, told me about
17 them.

18 Q. BY MS. SILAS: And did you ever meet with anyone from
19 the Union in 2013?

20 A. Yes.

21 Q. Did you meet only once?

22 A. No.

23 Q. About how many times did you meet with someone from the
24 Union before you were fired in 2013?

25 A. Four to five times.

1 Q. So when was the first time that you met with the Union?

2 A. The first week of October.

3 Q. Okay. And who from the Union did you meet with?

4 A. With Sandro Baiza and James.

5 Q. And where did you meet?

6 A. At the Union's office.

7 Q. And did you meet with them alone?

8 A. No.

9 Q. Who was with you?

10 A. There was five of us.

11 Q. Okay. Could you please name everyone present?

12 A. Elizabeth Lemus, Yasmin Ramirez, Reyna Sorto --

13 MS. SILAS: I think she said Maria Chavez.

14 THE INTERPRETER: And Maria Chavez.

15 Q. BY MS. SILAS: Now, generally, what did you discuss at
16 this meeting?

17 A. Because we didn't have permission to go to the doctor,
18 some glasses that they gave us, and because we wanted
19 vacations.

20 Q. Okay. Now, the glasses, are those also referred to as
21 goggles?

22 A. Yes.

23 Q. And what was the problem with the goggles?

24 A. Because they were big, they covered the whole face, and
25 we sweat a lot.

1 Q. I see. Besides sweating, did you have any other
2 physical conditions from wearing those goggles?

3 A. Yes. I got dizzy and it gave me a headache.

4 Q. I see. And why was that?

5 A. Because it was tight on me, and because of that the
6 blood didn't flow, and that's why I was dizzy.

7 Q. I see. And did you discuss that during your first
8 meeting with the Union?

9 A. Yes.

10 Q. I see. Now, at this meeting, did you do anything in
11 particular to show that you wanted the Union's help?

12 THE INTERPRETER: I'm sorry. Would you repeat that
13 again?

14 Q. BY MS. SILAS: At this meeting, this first meeting with
15 the Union, did you do anything in particular to show that you
16 wanted the Union's help?

17 THE INTERPRETER: I can't hear the last word that you
18 said. The Union what?

19 Q. BY MS. SILAS: At this meeting, did you do anything in
20 particular to show that you wanted the Union's help?

21 A. Yes.

22 Q. And what did you do?

23 A. I signed a card.

24 Q. Now, following this meeting, did you talk to any of your
25 coworkers about the Union?

1 A. Yes.

2 Q. And where did you talk to them?

3 A. In the car, on our way to work at 5 o'clock in the
4 morning.

5 Q. I see. Now, after this first meeting with the Union,
6 did anything about your working conditions change?

7 A. Yes, until the next week.

8 Q. Okay. What changed the next week?

9 A. They changed our goggles.

10 Q. I see. And were these goggles any different from the
11 uncomfortable goggles that you testified about?

12 A. Yes.

13 Q. What was different about them?

14 A. They are smaller, and the head didn't hurt, and it
15 didn't get me dizzy.

16 Q. I see. Now, who gave you the new goggles?

17 A. Tomas Berganza.

18 Q. And prior to that first meeting with the Union, had you
19 ever complained to Tomas about the old goggles?

20 A. Yes.

21 Q. How many times did you complain?

22 A. Two times.

23 Q. Okay. And what did he tell you when you complained?

24 A. To make a decision or deal or put up with the goggles or
25 go home.

1 Q. I see. Now, when was the second time that you met with
2 the Union?

3 JUDGE AMCHAN: Well, let's go back. What -- when were
4 these conversations with Mr. Berganza about the goggles?

5 THE WITNESS: Excuse me?

6 JUDGE AMCHAN: She talked about complaining about the
7 goggles to Mr. Berganza two times. When did that occur?

8 THE WITNESS: I do not remember the exact date, but that
9 I did go from the 20th till the first of October to tell him
10 that I did not -- I couldn't stand the goggles.

11 MS. SILAS: Can I --

12 JUDGE AMCHAN: Yes.

13 MS. SILAS: May I? Okay.

14 Q. BY MS. SILAS: These two times that you went to Tomas,
15 do you remember what year they were in?

16 A. 2013.

17 Q. Okay. And you said it was before you met with the Union
18 for the first time, right?

19 A. Yes.

20 Q. Okay. And when was your first meeting with the Union?

21 A. The first week of October.

22 Q. Okay. So about how soon before the first meeting with
23 the Union had you had your last conversation with Tomas about
24 the goggles?

25 A. A week.

1 Q. I see. And what about --

2 MS. SILAS: I can leave it at that, Your Honor, or I can
3 try to get that other conversation in there.

4 Q. BY MS. SILAS: And the other, the second conversation,
5 the very first time you talked to him, about how soon was
6 that before the last conversation, about the goggles?

7 A. I went on a Thursday, and the next week I went on a
8 Tuesday. I do not remember the date.

9 Q. Okay. So did you go back to back? Did you go the
10 Tuesday and -- did you go the Thursday and then the Tuesday
11 of the following week?

12 A. Exactly.

13 Q. Okay. Thank you. Now, when was the second time that
14 you met with the Union?

15 A. The second week of October.

16 Q. And where was that meeting?

17 A. In the Union's office.

18 Q. And were you at that meeting alone?

19 A. No.

20 Q. Were any of your coworkers with you?

21 A. Yes.

22 Q. All right. Now, when was the third time that you met
23 with the Union?

24 A. I don't remember the date. We went to a Wendy's in
25 Rockville.

1 Q. Okay. So was the meeting at a Wendy's?

2 A. Yes.

3 Q. And were you -- were any of your coworkers there?

4 A. Yes.

5 Q. Okay. And who from the Union was there?

6 A. Sandro Baiza and James.

7 Q. Now, how many of your coworkers were at that meeting?

8 A. Eight to 10 people.

9 Q. So, Aracely, I just want to return to the Shady Grove
10 facility where you worked. Now, are there different work
11 stations where Tito employees sort materials inside that
12 station? I mean, recycling center.

13 THE INTERPRETER: I'm sorry?

14 MS. SILAS: I'm sorry, I'm going to re-ask the question.

15 THE INTERPRETER: Okay.

16 Q. BY MS. SILAS: Are there different stations where Tito
17 employees sort materials within that facility?

18 A. Yes.

19 Q. And are there any stations that may be considered
20 primary stations?

21 A. Yes.

22 Q. And how many primary stations are there?

23 A. Three.

24 Q. Where are they?

25 A. The pre-sort, the light sort, and that's known as

1 plastic and glass.

2 Q. Okay. So was that light sort also known as plastics?

3 A. Yes.

4 Q. I see. Now, do you have experience working at those
5 different stations?

6 A. Yes.

7 Q. And do any of them have substations within them?

8 A. Yes.

9 Q. Now, are any of the stations more difficult to work at
10 than others?

11 A. Yes.

12 Q. Which is the most difficult station to work at?

13 THE INTERPRETER: I'm sorry. May I request? What?

14 MS. SILAS: I think she's saying pet.

15 THE INTERPRETER: The pet?

16 Q. BY MS. SILAS: Okay. Are you saying pet, p-e-t?

17 A. Yes.

18 Q. Now, is PET a substation?

19 A. No.

20 Q. Where is PET located?

21 A. In the light sort, the plastic.

22 Q. Okay. Now, have you ever worked in pet?

23 A. Yes.

24 Q. And why is it the most difficult station?

25 A. Because that's where all the plastic falls in, and the

1 smaller plastic, and all the plastic is there, and you have
2 to constantly have your hands in to take out the plastic.

3 Q. All right. Are you required to work at a certain pace
4 at that station?

5 A. Yes.

6 Q. Okay. How -- what is the pace you're supposed to work
7 at?

8 A. As fast as you can, with both hands.

9 Q. I see. Now, which is the least difficult station to
10 work at?

11 A. Natural.

12 Q. And why is that?

13 A. Because it's big and less things goes through.

14 Q. I see. Now, when you say it's big, do you mean the
15 materials that run through that station are large, or the
16 station itself is large?

17 A. The plastic is bigger, as the milk gallon.

18 Q. Okay. Now, Ms. Ramos, I just want to switch gears here.
19 You testified earlier that you were terminated on October 31.
20 Did you work on that day?

21 A. Yes.

22 Q. And how did you find out you were terminated on that
23 day?

24 A. Because a supervisor called me.

25 Q. Okay. And who was that?

1 A. The supervisor Tomas Berganza.

2 Q. Okay. When he called you, did you go somewhere to meet
3 with him?

4 A. Yes.

5 Q. Okay.

6 A. To his office.

7 Q. Okay. Now, when he called you, did he call you
8 directly? How did he call you?

9 A. A worker from MES named Norma Garcia told me that Tomas
10 wanted to talk to me.

11 Q. Okay. At about what time did she tell you that?

12 A. After 3:30.

13 Q. Okay. Now, when you went to meet with Tomas, where did
14 you position yourself at his office?

15 A. At the door.

16 Q. Okay. And where was Tomas?

17 A. Inside, sitting in the office.

18 Q. Okay. And which way was he facing?

19 A. Outside.

20 Q. Okay. Was he facing toward you?

21 A. Yes.

22 Q. Okay. And was there anyone in the office with Tomas?

23 A. Not in the office.

24 Q. Was there anyone close to you?

25 A. Yes.

1 Q. There was someone close to you?

2 A. Not close-close, but it was at the other side.

3 Q. The other side of what?

4 A. The other side of the room, of the door.

5 Q. I see. Now, who was at the other side of the room?

6 A. Tomas Berganza's cousin, Manuel Beltran.

7 Q. Okay. And now, what was Mr. Beltran doing when you were
8 standing at Tomas' door?

9 A. Washing his hands.

10 Q. Okay. And which way was he facing?

11 A. To the sink, his hands.

12 Q. And what was the distance between where you were
13 standing and where Mr. Beltran was washing his hands?

14 A. Thirty-five to thirty-eight feet.

15 Q. All right. So what happened during your meeting with
16 Tomas?

17 A. I arrived. I knocked on the door, and I said, did you
18 call me, Tomas? He answered yes. And then I said, tell me
19 what you want. He responded, you are fired. And I said,
20 what? And he said, yes, you are fired. And I asked, why are
21 you telling me this? And then he responded yes, because of
22 your inappropriate attitude.

23 And I responded, why? And he told me, I noticed that
24 you have been speaking with Mr. Sandro Baiza, the guy from
25 the Union. Now that you are with the Union, call Sandro.

1 Call him to find you a job.

2 Q. Okay.

3 A. And I started crying, and I couldn't speak. And at that
4 moment he raised his hands and his voice, and he said, what
5 has been spoken has been spoken. You can leave. Then I left
6 from the door, and then I came back, and I told him that I
7 needed a letter explaining why he was firing me.

8 Q. Did he give you anything?

9 A. Yes.

10 Q. I'll show you a document. I'll refer you to General
11 Counsel's Exhibit 18.

12 MS. SILAS: I think Your Honor may already have that.
13 (General Counsel's Exhibit 18 marked for identification.)

14 JUDGE AMCHAN: Yes, I got it.

15 MS. SILAS: 10/31, yes.

16 Q. BY MS. SILAS: All right, Ms. Ramos, do you recognize
17 this document?

18 A. Yes.

19 Q. And what is it?

20 A. That's the letter that the supervisor, Mr. Tomas
21 Berganza made, and that he gave it to me saying that it was
22 my termination letter.

23 MS. SILAS: I see. General Counsel moves for the
24 admission of Exhibit 18.

25 MS. JANDRAIN: No objection.

1 JUDGE AMCHAN: It's received.

2 (General Counsel's Exhibit 18 received in evidence.)

3 Q. BY MS. SILAS: Now, this document is written in English.

4 Can you read English?

5 A. I cannot read or write in English, and I told him to
6 give me one in Spanish. And he said no, that he was only
7 going to give me this one.

8 Q. I see. Now, did he tell you what this document said?

9 A. No.

10 Q. I see. Did you ask?

11 A. Yes. I asked to have -- to read it to me, and there's
12 nothing about the conversation that we had.

13 Q. I see. Now, Ms. Ramos, I'm going to go back to when you
14 were talking to Tomas. Did Mr. Beltran ever come any closer
15 to your conversation with Tomas?

16 A. No.

17 Q. And up to that point, had you ever told Tomas that you
18 were talking to Sandro?

19 A. No.

20 Q. Had you ever told him you were talking to anyone from
21 the Union?

22 A. No, because I was afraid they would fire me from my job.

23 Q. I see. Now, had you ever discussed Sandro or the Union
24 openly at work?

25 A. No.

1 Q. Okay. How would Tomas know you were talking to Sandro?

2 A. He didn't give me any explanation. He just told me that
3 he noticed.

4 Q. I see. Now, Ms. Ramos, prior to your discharge, had
5 Tomas ever informed you of any complaints that you were
6 allowing materials to pass on the line?

7 A. He never told me anything.

8 Q. Okay. Had he ever counseled you about your performance?

9 A. No.

10 Q. Did you ever tell Tomas that you were allowing materials
11 to pass on the line?

12 A. No.

13 MS. SILAS: Just one second, Your Honor.

14 Q. BY MS. SILAS: Now, at any time during your meeting with
15 Tomas, on the day you were fired, or at any time, did you
16 tell him that the plant was going to explode and catch fire?

17 A. No.

18 Q. Did you say that anything would happen to the plant?

19 A. No.

20 Q. I see. Now, Ms. Ramos, did you ever tell Tomas during
21 this meeting that a representative of yours would come and
22 investigate your discharge?

23 A. No.

24 Q. I see. Now, Ms. Ramos, earlier you testified that
25 Ms. Lemus attended the first union meeting with you and

1 several other employees; did you see her at any other union
2 meetings that you attended?

3 A. Yes. I did see her in November as well.

4 Q. Okay. And following those meetings, did you talk to --
5 talk about the Union with Ms. Lemus?

6 A. Yes.

7 Q. Okay. I just want to direct your attention to
8 December 2013. Did you talk to Ms. Lemus about the Union
9 that month?

10 A. In December?

11 Q. Yes.

12 A. Yes.

13 Q. Now, what was your understanding as to her feelings
14 about the Union at that point?

15 MS. JANDRAIN: I'm going to object just to the extent
16 she's going to testify about what Ms. Lemus said. She can
17 testify about her understanding, but --

18 MS. SILAS: She's testifying as to her understanding.
19 The question was, what was her understanding.

20 MS. JANDRAIN: Can you just let me finish my objection,
21 please? Right. She can testify about her understanding, but
22 to the extent she's going to provide hearsay testimony, I
23 think that's prohibited.

24 JUDGE AMCHAN: I think it's actually, excuse me, the
25 opposite. I think she can testify to what she heard --

1 A. Yes.

2 Q. And if that person isn't sorting any materials, all of
3 it gets passed to you; is that correct?

4 A. No.

5 Q. Well, if she doesn't sort any of the materials, what
6 happens to it?

7 A. There's a lot of materials, and dependent on the
8 station, that's when you decide what's going to be taken out.
9 You don't take everything out at once.

10 Q. Right. My question is just, everybody has a job on the
11 line to take out what they can, correct?

12 A. Yes.

13 Q. Okay. And do you remember having a meeting with
14 Mr. Berganza in October of 2013 where he told you that you
15 were leaving materials on the line?

16 A. No.

17 Q. You don't remember any such meeting?

18 A. I've never had any type of complaining in regards to my
19 job.

20 Q. Okay. So you don't know whether anybody complained that
21 you were leaving materials on the line, correct?

22 A. No.

23 Q. You work near Juana Rosales, correct? Juana, I'm sorry.

24 A. Yes.

25 Q. She also works on the line with you?

1 A. Yes.

2 Q. She's an MES employee, right?

3 A. Yes.

4 Q. You never told Tomas that you were intentionally leaving
5 materials on the line?

6 A. No.

7 Q. Just to clarify, Juana Rosales is not a Tito employee,
8 correct?

9 A. No.

10 Q. You testified about a meeting where Mr. Berganza told
11 you that you were being terminated; do you remember that?

12 A. Yes.

13 Q. And just to clarify, Manuel Beltran was in the office
14 during that meeting, correct?

15 MS. SILAS: Objection, Your Honor. Misstates her
16 testimony.

17 JUDGE AMCHAN: Well, she testified where Mr. Beltran
18 was.

19 MS. SILAS: Right.

20 MS. JANDRAIN: Okay, let me just --

21 Q. BY MS. JANDRAIN: Where was Mr. Beltran during the
22 meeting?

23 A. Washing his hands.

24 Q. Was he in the office?

25 A. No.

1 MS. JANDRAIN: Okay. May I approach the witness, Your
2 Honor?

3 Q. BY MS. JANDRAIN: Ms. Ramos, do you recall providing a
4 declaration to an NLRB agent in this case?

5 A. Yes.

6 Q. That's your signature on the last page?

7 A. Yes.

8 Q. All right. That's a copy of the statement you gave to
9 the NLRB agent?

10 A. Yes.

11 Q. Can I turn your attention to page 2 of this statement?

12 MS. JANDRAIN: And I don't know actually, Your Honor, if
13 the line numbers for the English version match up with the
14 Spanish version. Do you have another copy of the Spanish
15 version?

16 MS. SILAS: No. I think I --

17 MS. JANDRAIN: Can I approach? I don't want to look
18 over her shoulder, but --

19 MS. SILAS: Oh, for yourself?

20 MS. JANDRAIN: Yes.

21 MS. SILAS: I thought you were asking for me. One
22 second. Let me see if I have another one here.

23 JUDGE AMCHAN: Well, while we're looking, I mean, I
24 would go until this witness is finished, except I do not want
25 the Reporter to not have a car. Can we finish by 6:45?

1 MS. JANDRAIN: What time is it now?

2 MS. SILAS: I'll have a brief redirect but --

3 MS. JANDRAIN: I just have a few more questions.

4 JUDGE AMCHAN: All right.

5 MR. GREENBAUM: Let's just try to accelerate the pace.

6 Q. BY MS. JANDRAIN: All right, Ms. Ramos, if you could
7 look at page 2 of the declaration, line 15. In the English
8 version, it's line 13 and 14. If you could look at line 15
9 and 16, do you see where it says, "His cousin,
10 Manuel Beltran, was in the office but was at the other side
11 of the room?"

12 A. Yes.

13 Q. And Mr. Berganza stepped out of that meeting at some
14 point in time, correct?

15 A. No. He just got up from the chair.

16 Q. Okay. So you were never alone with Mr. Beltran in the
17 room?

18 A. Beltran?

19 Q. Yes.

20 A. No.

21 Q. And you never spoke to Mr. Beltran during that meeting?

22 A. No.

23 Q. Did you tell any of the union representatives about --
24 well, let me back up a minute.

25 You claim that Mr. Berganza made comments about the

1 Union during that meeting, correct?

2 A. Yes.

3 Q. Did you ever tell the union representatives about those
4 comments?

5 MS. SILAS: Objection, Your Honor. Why is that
6 relevant, whether she told the union representatives?

7 JUDGE AMCHAN: I'll allow the question.

8 THE WITNESS: I don't understand.

9 Q. BY MS. JANDRAIN: Did you tell anyone about the comments
10 that Mr. Berganza allegedly made during that meeting?

11 A. Only to the lawyer, Letitia.

12 Q. And during that meeting, Tomas also told you that David
13 had asked for you -- David Wyatt had asked for you to leave
14 the facility, correct?

15 A. Yes.

16 Q. And Tomas said that David told him you weren't doing
17 your job well, correct?

18 A. Yes.

19 MS. JANDRAIN: I have no further questions.

20 REDIRECT EXAMINATION

21 Q. BY MS. SILAS: Ms. Ramos, I just want to get some
22 clarification on Tomas' office. Is Tomas' -- could you
23 please describe the area in which Tomas' office is located?

24 A. Yes, if you allow me to, yes.

25 Q. Yes, if you can in words, because we can't see you on

1 long process there. Now, are there any stations that are
2 more difficult to work at than others?

3 A. Yes.

4 Q. Which is the most difficult?

5 A. The one at PET, right here where you see the five people
6 on 68.

7 Q. Why is that the most difficult?

8 A. Because for this material coming from the water, there
9 is a lot of material there, and you have to do it really
10 fast. And you have to use both hands and go as fast as
11 possible.

12 Q. Which is the least difficult?

13 A. Natural.

14 Q. Sorry?

15 A. Natural and aluminum.

16 Q. Why is that?

17 A. Because this station, there is less material going
18 through natural. And in aluminum, you can work with one
19 hand many times, not all the time.

20 Q. Okay, we're done with 68. We're done with all of those,
21 so just put them to the side. Now, we already know that
22 you're familiar with the Painters Union, correct?

23 A. That is correct.

24 Q. And you know Sandro Baiza and you know James Coats?

25 A. Correct.

1 Q. We know that while you were at the Shady Grove facility,
2 the employees there -- the Tito employees there were trying
3 to form a union.

4 A. That is correct.

5 Q. Those efforts started in around --

6 MR. GREENBAUM: Objection, leading.

7 MS. SILAS: Okay.

8 JUDGE AMCHAN: Okay.

9 Q. BY MS. SILAS: When did those start? When did those
10 union efforts start?

11 A. I called Mr. Sandro the last Friday of the month of
12 November.

13 Q. You called Sandro in the last month of November? I'm
14 sorry, I'm not clear.

15 MR. GREENBAUM: Objection. She's testifying, Your
16 Honor.

17 MS. SILAS: I want to re-ask the question, because I
18 don't think it was clear.

19 MR. GREENBAUM: It was clear.

20 MS. SILAS: I don't think it was clear.

21 MR. GREENBAUM: Your Honor, I'm going to object. It was
22 clear. Come on.

23 JUDGE AMCHAN: Right, you'll just have to deal with it
24 and maybe --

25 Q. BY MS. SILAS: Okay. Did you ever talk to Sandro before

1 the end of November 2013? Please put those away, put those
2 away.

3 THE INTERPRETER: Should I repeat the question?

4 Q. BY MS. SILAS: When did you first communicate with
5 Sandro?

6 MS. JANDRAIN: Objection, asked and answered.

7 JUDGE AMCHAN: Overruled.

8 MS. JANDRAIN: That wasn't the first question.

9 THE WITNESS: The last Friday in the month of September.
10 Sorry.

11 Q. BY MS. SILAS: How did you communicate with him?

12 A. I called him on the phone.

13 Q. How did you get Sandro's information or phone number?

14 A. Ms. Yasmin Ramirez gave it to me.

15 Q. I see. And when you spoke to Sandro, generally, what
16 did you talk about?

17 A. About the problems that we had at work, at the
18 recycling, that they didn't want to let us go to the doctor.
19 Sometimes, we were sick and we had to work still being sick.
20 And we had a problem during those days with the glasses that
21 we were using.

22 Q. When you say glasses, are those also known as goggles?

23 A. Yes, the same.

24 Q. So after you talked to Sandro, did you ever meet with
25 him?

1 A. Yes.

2 Q. When did you meet with him?

3 A. The following Friday, which was October 4, 2013.

4 Q. Where did you meet with him?

5 A. The offices in the union building.

6 Q. Were you alone with him?

7 A. No.

8 Q. Who else was with you?

9 A. It was five people that we went together.

10 Q. Please name everyone besides yourself who was present.

11 A. It was Ms. Elena Chavez, Ms. Elizabeth Lemus, and

12 Aracely Ramos, Yasmin Ramirez, and myself.

13 Q. Besides Sandro, was anyone else from the Union present?

14 A. Yes.

15 Q. Who?

16 A. Mr. James Coats.

17 Q. Generally, what did you discuss during this meeting with
18 the Union?

19 A. The problems that we had at that time, that they already
20 told us that with two faults, even if we go to the doctor,
21 that we were going to be fired. We had the problems with
22 the glasses, the goggles. We knew we had rights, and we
23 wanted to enforce the rights. We wanted to find a way that
24 our rights would be respected.

25 Q. What was the issue with the goggles?

1 A. The first thing that would happen is that they would get
2 blurry and we could not see clear.

3 Q. Anything else?

4 A. And it was tight around here. The belt was tight around
5 here and --

6 Q. Around where? We can't see "here."

7 A. Around our head. The goggles here, the belt was really
8 tight.

9 Q. Around your head?

10 A. Yes.

11 Q. After the first meeting with the Union, did you discuss
12 the Union with any of your coworkers?

13 A. Yes.

14 Q. How did you speak to them about the Union?

15 A. We would talk over the phone after we got off work.

16 Q. After that did you meet with the Union again?

17 A. Yes.

18 Q. When was the next time that you met with the Union?

19 A. On the following Friday. It was on October 11, after
20 working hours. We went to the office.

21 Q. Did you go to that meeting alone?

22 A. No.

23 Q. Did any of your coworkers go with you?

24 A. Yes.

25 Q. Were any of them different from the first meeting?

1 A. Si.

2 Q. About how many were different from the first meeting?

3 A. Three more people.

4 Q. After that second meeting, did you meet with the Union
5 for a third time?

6 A. Yes, correct.

7 Q. And when was the third time you met with the Union?

8 A. It was on a Wednesday. I believe it was October 16,
9 2013.

10 Q. Where did you meet?

11 A. We met at the Wendy's that is over 355, near the
12 recycling.

13 Q. Were you alone at that meeting?

14 A. No.

15 Q. Were any of your coworkers from the recycling plant
16 there?

17 A. Yes.

18 Q. About how many were there?

19 A. We were like around 10 people there.

20 Q. Ms. Sorto, I want to direct your attention to
21 November 1, 2013. Did you work on that day?

22 A. Yes.

23 Q. What station were you working at that day?

24 A. In the PET station.

25 Q. Did anything unusual happen to you that day?

1 A. Yes.

2 Q. What happened?

3 A. Mr. Tomas Berganza called me to his office. And he told
4 me that I was not producing enough material, that I would
5 have to work faster.

6 Q. Did you say anything?

7 A. Yes.

8 Q. What did you say?

9 A. That I already told him about the problem that I had,
10 the pain in my arm.

11 Q. What caused the pain in your arm?

12 A. The constant movement and fast movement that I have to
13 utilize in order to work with both hands, because I had to
14 work with both hands.

15 Q. Was your arm functioning normally?

16 A. No.

17 Q. Why not?

18 A. Because there's a moment when I lose strength.

19 Q. Why?

20 A. Because I had an accident at work.

21 Q. We're going to return to that. Up to that point, up to
22 November 1st, had Tomas ever counseled you about your work?

23 A. No, never.

24 Q. Had he ever asked you why you weren't working fast
25 enough?

1 A. No, never.

2 Q. You may have already answered this, but I'm going to go
3 ahead and ask it again for clarification. Was this the
4 first time that you informed Tomas of pain in your arm?

5 A. No.

6 Q. How many times before had you told him about it?

7 A. There were several times. I don't remember the amounts,
8 the number, but there were various times.

9 Q. Did he know about your work injury?

10 MR. GREENBAUM: Objection, Your Honor. Work injury?

11 MS. SILAS: She did testify --

12 MR. GREENBAUM: We haven't established it was a work-
13 related injury.

14 MS. SILAS: That was her testimony, Your Honor.

15 MR. GREENBAUM: No, it wasn't, Your Honor.

16 JUDGE AMCHAN: You'll have to ask. I'm not sure that
17 you laid the --

18 MR. GREENBAUM: That's a leading question anyway.

19 MS. SILAS: We'll return to that.

20 MR. GREENBAUM: Your Honor, I'm objecting to this "we'll
21 return to that." That's a statement.

22 MS. SILAS: You can't tell me how to question my
23 witness.

24 MR. GREENBAUM: That's not a question.

25 MS. SILAS: I'm just saying we'll return to it.

1 JUDGE AMCHAN: Okay, let's continue.

2 Q. BY MS. SILAS: Ms. Sorto, did Tomas advise you to do
3 anything during that November 1st meeting?

4 A. He told me to go to the doctor so the doctor could get
5 x-rays so he could explain why I was feeling that pain,
6 because I was feeling pain.

7 Q. Following the November 1st meeting with Tomas, did you
8 have any other meetings with him concerning the issue with
9 your arm?

10 A. Yes.

11 Q. When was the next time that you met with Tomas?

12 A. After November 1st?

13 Q. Yes.

14 A. On November 8, 2013.

15 Q. What happened on that day?

16 A. He asked me if I had gone to the doctor.

17 Q. Well, let me just step back a little bit. Were you
18 working on that day?

19 A. Yes.

20 Q. And where were you when you were talking to Tomas?

21 A. I was at the PET and the plastic.

22 Q. What happened during your discussion? What happened?
23 What did he say on November 8th?

24 A. He told me that I have to get him the letter from the
25 doctor. And I told him that I have the appointment for

1 November 21st. And he told me that he needed it as soon as
2 possible.

3 Q. Were you able to provide Tomas with anything that day?

4 A. I gave him the document, the diagnose that the
5 chiropractor has performed about the surgery process.

6 (General Counsel's Exhibit 49 marked for identification.)

7 Q. BY MS. SILAS: I'm going to show you a document, General
8 Counsel's Exhibit 49. Ms. Sorto, are you familiar with this
9 document?

10 A. Yes.

11 Q. What is it?

12 A. This is the document that I gave to Mr. Tomas Berganza,
13 on November 8th. And he told me that this was not enough,
14 that this was not what he wanted.

15 MS. SILAS: General Counsel moves to admit Exhibit 49.

16 MS. JANDRAIN: We object to the relevance of the
17 document, Your Honor. This relates to -- I'll ask about it
18 on cross-exam. This relates to a doctor's visit on February
19 of 2013.

20 MS. SILAS: This is very relevant, Your Honor.

21 JUDGE AMCHAN: She said that -- I'm going to receive it.
22 She said she gave this to Mr. Berganza on November the 8th
23 or at least offered it to him.

24 (General Counsel's Exhibit 49 received in evidence.)

25 Q. BY MS. SILAS: Was this the first time that you had

1 given -- I'm going to refer to Tomas Berganza as just Tomas
2 to avoid confusion. Was this the first time that you had
3 given Tomas documentation concerning your arm?

4 A. No.

5 Q. Had you given him documentation of that injury in the
6 past?

7 A. Yes.

8 Q. More than once?

9 A. Yes.

10 Q. About how many times?

11 A. Around five to seven times.

12 Q. Following the November 8th meeting with Tomas, did you
13 have any other meetings with him?

14 A. Yes.

15 Q. When was the next time that you met with him?

16 A. On November 14th.

17 Q. Did you meet with him in person or on the phone?

18 A. He called me to his office.

19 Q. Besides you and Tomas, was anyone else present during
20 your meeting with him?

21 A. No, there was nobody else.

22 Q. About what time of day was your meeting with him?

23 A. It was around 3:15 p.m. in the afternoon.

24 Q. What happened during the meeting?

25 A. He told me, Reyna, you no longer work here, go to see --

1 go to the Union so they could help you.

2 Q. Did you ask him why you were no longer working there?

3 A. Yes, because I couldn't understand why he was telling me
4 that I no longer had a job.

5 Q. And what did he say?

6 A. Mr. Mark Wheeler and David Wyatt have decided that you
7 no longer have a job. This is your letter.

8 (General Counsel's Exhibit 50 marked for identification.)

9 Q. BY MS. SILAS: I'm going to show you what's been marked
10 as General Counsel's 50. Ms. Sorto, do you recognize that
11 document?

12 A. Yes, that's the one that Mr. Tomas Berganza gave me the
13 day that he fired me.

14 MS. SILAS: General Counsel moves to admit Exhibit 50.

15 MS. JANDRAIN: No objection.

16 JUDGE AMCHAN: It's received.

17 (General Counsel's Exhibit 50 received in evidence.)

18 Q. BY MS. SILAS: During your meeting with Tomas, did he
19 say anything about you not achieving production goals?

20 A. He told me that I was not producing enough.

21 Q. Prior to this, had he ever told you that you weren't
22 meeting production goals?

23 A. No, never.

24 Q. Had he ever told you, you weren't producing enough?

25 A. No.

1 without explanation, on the PET station, which we all have
2 heard is the most difficult station there. Then within
3 weeks, Tomas e-mails Respondent's human resources manager
4 and says I'm watching Reyna, she's working slowly.

5 JUDGE AMCHAN: Well, then I'm going to let you delve
6 into this. Bring her back in.

7 MS. SILAS: Thank you.

8 (Witness re-enters hearing room.)

9 Q. BY MS. SILAS: When we left off, Ms. Sorto, you were
10 saying that you had been working at the glass station and
11 you got an injury, and you had to undergo a medical
12 procedure. What was the procedure you had to have?

13 A. I had surgery right here, the palm of my hand.

14 Q. Why was that?

15 A. Because when I was separating the glasses, there was a
16 piece of glass inside.

17 Q. Inside what?

18 A. Here in my hand. The doctor said that it affected my
19 middle nerve.

20 Q. Was the glass stuck in there?

21 A. Yes. He did nine stitches surgery. He said that he had
22 to explore it and clean, and that's why.

23 MS. SILAS: I want the record to reflect that the
24 witness is pointing to the palm of her hand nearest to her
25 wrist.

1 Q. BY MS. SILAS: Did you receive any documentation showing
2 that you would have surgery?

3 A. Yes, I did receive it.

4 Q. Did you provide that documentation to anyone at Tito
5 Contractors?

6 A. Yes. I sent it to Ms. Julisa through fax.

7 (General Counsel's Exhibit 52 marked for identification.)

8 Q. BY MS. SILAS: I'm going to show you what's been marked
9 as General Counsel's Exhibit 52. Do you recognize this
10 document?

11 A. Yes.

12 Q. What is it?

13 A. That's the one that I sent to Ms. Julisa, to Tito's
14 office.

15 MS. SILAS: We move to admit General Counsel's
16 Exhibit 52.

17 MS. JANDRAIN: No objection.

18 JUDGE AMCHAN: It's received.

19 (General Counsel's Exhibit 52 received in evidence.)

20 Q. BY MS. SILAS: When did you fax that to Julisa?

21 A. The same day as my doctor's visit.

22 Q. So between the time of your injury in January and the
23 time that you faxed this letter to Julisa, were you working?

24 A. No.

25 Q. Did you continue to receive medical attention

1 immediately after your surgery?

2 A. Yes.

3 Q. Did you receive any documentation of that treatment?

4 A. Yes.

5 Q. Did you provide that documentation to anyone?

6 A. Yes.

7 Q. Who did you provide it to?

8 A. To Ms. Julisa.

9 Q. How did you provide it to her?

10 A. I sent it through fax.

11 (General Counsel's Exhibit 53 marked for identification.)

12 Q. BY MS. SILAS: I'm going to show you what's been marked
13 as General Counsel's exhibit -- Ms. Sorto, are you familiar
14 with General Counsel's Exhibit 53?

15 A. Yes.

16 Q. What is it?

17 A. That's the document that I sent to Ms. Julisa.

18 Q. When did you send it to her?

19 A. That same day on February 28th that I went to the
20 doctor.

21 MS. SILAS: We move for the admission of General
22 Counsel's 53.

23 MS. JANDRAIN: No objection.

24 JUDGE AMCHAN: Received.

25 (General Counsel's Exhibit 53 received in evidence.)

1 Q. BY MS. SILAS: Now, this document here says that you
2 were going to re-evaluated in four weeks. Did you -- that's
3 yes?

4 A. Yes.

5 Q. Did you actually receive a re-evaluation in four weeks?

6 A. Yes.

7 Q. Did you obtain medical documentation of that evaluation?

8 A. Yes.

9 Q. Did you provide that document to anyone?

10 A. Yes.

11 Q. Who did you provide it to?

12 A. To Ms. Julisa.

13 Q. How did you provide it to her?

14 A. I sent it through fax.

15 (General Counsel's Exhibit 54 marked for identification.)

16 Q. BY MS. SILAS: I'll show you what's been marked as
17 General Counsel's Exhibit 54.

18 A. And after I would send it through fax, I would always
19 call her and make sure that she had received it.

20 Q. I see. That's for each of these?

21 A. Yes.

22 Q. Did you speak to her each time?

23 A. Yes.

24 Q. Did she confirm each time that she had received these
25 documents that we have gone over already?

1 A. Yes.

2 MS. SILAS: And just for clarification, that is General
3 Counsel's Exhibit 52, 53, and 54. I'll move to admit
4 General Counsel's Exhibit 54.

5 MS. JANDRAIN: No objection.

6 JUDGE AMCHAN: It's received.

7 (General Counsel's Exhibit 54 received in evidence.)

8 Q. BY MS. SILAS: Now, this form indicates that you were to
9 return to work on April 12th. Did you return to work on
10 that day?

11 A. Yes.

12 Q. Was this your first time back to work since the day of
13 your injury?

14 A. Yes.

15 Q. This form also indicates that there were some work
16 restrictions. Did you provide anyone other than Julisa with
17 a copy of this form?

18 A. Yes, to Mr. Tomas Berganza.

19 Q. When did you provide him with a copy of this?

20 A. On April 12th, the day that I showed up to work.

21 Q. Did you give it to him in person?

22 A. Yes.

23 Q. When you returned to work, did you experience any
24 problem with your arm or work injury?

25 A. Yes.

1 Q. This form, Exhibit 54, says that you were going to be
2 evaluated again in six weeks. Were you, in fact, evaluated
3 again?

4 A. Yes.

5 Q. Did you obtain any documentation of that evaluation?

6 A. Yes.

7 Q. Did you provide that document to anyone?

8 A. Yes, to Mr. Tomas Berganza.

9 (General Counsel's Exhibit 55 marked for identification.)

10 Q. BY MS. SILAS: I'm going to show you what's been marked
11 as General Counsel's Exhibit 55. Ms. Sorto, do you
12 recognize that document?

13 A. Yes.

14 Q. What is it?

15 A. That's the document that I gave to Mr. Tomas Berganza.

16 Q. When did you give it to him?

17 A. The next day after the appointment.

18 Q. Now, following May 8, 2012, did you remain under the
19 care of a physician?

20 A. Yes.

21 Q. Did you continue to receive medical treatment for your
22 injury?

23 A. Yes.

24 Q. Did you continue to receive documentation of your
25 treatment and restriction?

1 A. Yes.

2 Q. Did you provide that documentation to anyone?

3 A. To Mr. Tomas Berganza.

4 (General Counsel's Exhibits 56 and 57 marked for
5 identification.)

6 Q. BY MS. SILAS: I'm going to show you what's been marked
7 as General Counsel's Exhibits 56 and 57. Let's just focus
8 on General Counsel's Exhibit 56. Are you familiar with this
9 document?

10 A. Yes.

11 Q. What is it?

12 A. This is a document that I gave to Mr. Tomas Berganza.

13 Q. When did you give him that document?

14 A. The next day after the appointment.

15 Q. Now I want to look at 57. Are you familiar with General
16 Counsel's Exhibit 57?

17 A. Yes.

18 Q. What is it?

19 A. It's a document that I gave to Mr. Tomas Berganza.

20 Q. When did you give it to him?

21 A. The next day after the appointment.

22 MS. SILAS: General Counsel moves to admit Exhibits 55,
23 56, and 57.

24 MS. JANDRAIN: No objection.

25 JUDGE AMCHAN: They are received.

1 (General Counsel's Exhibits 55 through 57 received in
2 evidence.)

3 Q. BY MS. SILAS: Ms. Sorto, did your physician ever return
4 you to full duty?

5 A. Yes.

6 Q. Did you stay on full duty?

7 A. No.

8 Q. So I just want to focus on when your physician returned
9 you to full duty first. Did you receive any documentation
10 of your doctor's decision to put you back to work on full
11 duty?

12 A. Yes.

13 Q. Did you provide that documentation to anyone?

14 A. Yes, to Mr. Tomas Berganza.

15 (General Counsel's Exhibit 58 marked for identification.)

16 Q. BY MS. SILAS: I'm going to show you what's been marked
17 as General Counsel's Exhibit 58. When did you provide Tomas
18 with this document?

19 A. The next day after the medical appointment.

20 Q. I should probably establish do you recognize this
21 document?

22 A. Yes.

23 Q. What is it?

24 A. It is a document that the doctor gave me and I gave to
25 Mr. Tomas Berganza.

1 Q. Up to the day that you provided Tomas Berganza with this
2 notice, where was your regular workstation?

3 A. Natural and aluminum.

4 Q. How long had you been working at those stations?

5 A. Since May 2012 until October 2013.

6 MS. JANDRAIN: Can we have a short break, please, Your
7 Honor?

8 JUDGE AMCHAN: Yeah, take five minutes. Let's try to
9 make five minutes actually five minutes.

10 (Off the record from 11:38 a.m. to 11:39 a.m.)

11 JUDGE AMCHAN: Go back on the record.

12 Q. BY MS. SILAS: Ms. Sorto, you said that -- you left of
13 saying that you had worked regularly at naturals and
14 aluminum from May 2012 to October 2013. Was there any
15 period of time where you didn't work at naturals and
16 aluminum during that period?

17 A. Yes.

18 Q. Now, when you gave Tomas General Counsel's Exhibit 58,
19 did anything about your work assignment change?

20 A. He sent me to work to presorts all week.

21 Q. So my understanding is before you had been at naturals
22 and aluminum from May 2012 until the time that you provided
23 him with General Counsel's 58?

24 A. Correct.

25 Q. And just for clarification, when you gave him this

1 document saying that you were back to full duty, he then
2 moved you to presort.

3 MS. JANDRAIN: Objection, asked and answered.

4 MS. SILAS: I'm just trying to clarify the chronology
5 here.

6 JUDGE AMCHAN: All right, if that's what it says -- I
7 mean if that's what the record says, that's what the record
8 says.

9 Q. BY MS. SILAS: Were you able to work at presort without
10 any issue with your arm?

11 A. No, I couldn't work because I didn't have enough
12 strength to break the bags and remove the heavy materials.

13 Q. Did you receive any medical attention or medical
14 treatment because of the continued pain you had?

15 A. Yes.

16 Q. Did you receive any documentation of that treatment?

17 A. Yes.

18 Q. In fact, General Counsel's Exhibit 58, which should
19 still be up there, says that you would be re-evaluated after
20 three months if you continued to have pain. You just
21 testified that you sought additional treatment. Who did you
22 provide that documentation to of your additional treatment?

23 A. To Mr. Tomas Berganza.

24 (General Counsel's Exhibit 59 marked for identification.)

25 Q. BY MS. SILAS: Let me show you what's been marked as

1 General Counsel's Exhibit 59. Ms. Sorto, do you recognize
2 this document?

3 A. Yes.

4 Q. What is it?

5 A. It's the document that I gave to Mr. Tomas Berganza.

6 MS. SILAS: General Counsel moves to admit Exhibits 58
7 and 59.

8 MS. JANDRAIN: No objection.

9 JUDGE AMCHAN: They're received.

10 (General Counsel's Exhibit 58 and 59 received in evidence.)

11 Q. BY MS. SILAS: When did you provide that document to
12 him?

13 A. The next day after the appointment.

14 Q. So after you provided this document to Tomas, did
15 anything about your job station change?

16 A. Yes. He sent me back to work natural and aluminum
17 again.

18 Q. We're done with that. At some point, did you file a
19 workers' compensation claim concerning your injury?

20 A. Yes.

21 Q. Were you awarded benefits?

22 A. Yes.

23 (General Counsel's Exhibit 60 marked for identification.)

24 Q. BY MS. SILAS: Let me show you what's been marked as
25 General Counsel's Exhibit 60. Do you recognize that

1 document?

2 A. Yes.

3 Q. What is it?

4 A. It's a decision from workers' compensation document.

5 MS. SILAS: Move to admit General Counsel's Exhibit 60.

6 MS. JANDRAIN: No objection.

7 JUDGE AMCHAN: It's received.

8 (General Counsel's Exhibit 60 received in evidence.)

9 Q. BY MS. SILAS: Now, Ms. Sorto, I just want to circle
10 back to the date of your termination. Where were you
11 working at the time of your discharge?

12 A. In PET.

13 Q. Who assigned you to that station?

14 A. Mr. Tomas Berganza.

15 Q. When did he assign you to that station?

16 A. October 7, 2013.

17 Q. Now, I want to go back to your meeting with Tomas on
18 November 8th. And that's exhibit -- I want you to look at
19 Exhibit 49 again. On November 8th, when you met with Tomas
20 and you gave him General Counsel's Exhibit 49 -- do you have
21 it there?

22 A. No.

23 Q. Did he offer to take you off of PET and return you to
24 naturals and aluminum?

25 A. No. He told me that he did not have light duty for me.

1 A. Yes, it's this one.

2 Q. Okay. And do you see beginning on page 3, line 23,
3 there is a -- your statement reads, "Berganza never gave any
4 consideration to the doctor's note, and he always put me in
5 the hardest places. He put me to work in the aluminum area,
6 and it was harder because we have to send that material
7 really clean.

8 A. That is correct. The material has to be really clean.

9 Q. Now, you haven't been back to the doctor since November
10 2012, correct?

11 A. No.

12 Q. Between February of 2012 and November of 2012, you went
13 to the doctor on at least 8 occasions, correct?

14 A. Yes.

15 Q. You continued to experience pain after November 2012,
16 but you just never went to the doctor, correct?

17 A. That is correct.

18 Q. Now, moving forward to August 2013, Mr. Berganza had a
19 meeting with several of the Tito employees at the recycling
20 center; do you remember that?

21 A. Can you please repeat the question?

22 Q. Sure. Isn't it true that Mr. Berganza had a meeting
23 with the Tito employees at the recycling center in August of
24 2013?

25 A. Yes.

1 Q. At that meeting, he talked about production, correct?

2 A. Correct.

3 Q. Generally, what he was saying was that production needed
4 to increase, correct?

5 A. Correct.

6 Q. Sometime after that meeting, he organized a test for all
7 of the Tito employees, correct?

8 A. Correct.

9 Q. The test was to measure how many hoppers each employee
10 could fill with water bottles, correct?

11 THE INTERPRETER: The water?

12 MS. JANDRAIN: From water, of water bottles.

13 THE WITNESS: That is correct.

14 Q. BY MS. JANDRAIN: There is a station called 37A,
15 correct?

16 A. Correct.

17 Q. For a two-day period, each employee was positioned at
18 that station and had to fill hoppers with water bottles,
19 correct?

20 A. That is correct.

21 Q. They measured how many hoppers a day you could fill,
22 correct?

23 A. Correct.

24 Q. Many of the ladies filled seven or eight hoppers a day,
25 correct?

1 A. Correct.

2 Q. You actually filled 10 to 12 hoppers a day, correct?

3 A. Correct.

4 Q. Do you remember when it was that you were tested?

5 A. I think it was October 9th.

6 Q. 2013? I'm sorry?

7 A. October 9 of 2013.

8 Q. Turning to the November 1st meeting that you had with

9 Mr. Berganza, this was a meeting in his office where he told
10 you that you were working slow, correct?

11 A. Correct.

12 Q. When you told him that your hand was hurting, he told
13 you to get a doctor's note, right?

14 A. Yes. He told me that he did not have light duty for me,
15 to go to the doctor, then to get x-ray from the doctor, and
16 then to send him a note explaining why I was feeling that
17 pain in the arm.

18 Q. He told you he wanted the doctor's note for next week,
19 right?

20 A. He told me, yes, as soon as possible.

21 Q. He didn't say next week?

22 A. No. He told me that he needed it as soon as possible.

23 And I told him that I have it for November 21st. He said
24 that it was too late, that he needed it as soon as possible.

25 Q. I want to focus just on the November 1st meeting. At

1 permission from anybody before you issue a verbal or written
2 discipline?

3 A. No.

4 Q. What about a suspension?

5 A. Yes.

6 Q. You have to get permission?

7 A. Yes.

8 Q. From who?

9 A. From my supervisors.

10 Q. Who are they?

11 A. Before it used to be Alex, Davys Ramos.

12 Q. Before when?

13 A. Around four or five months.

14 Q. So in October 2013, all the way through December or
15 January of 2014, it was Davys and Alex?

16 A. Yes.

17 Q. Davys Ramos?

18 A. Yes.

19 Q. And Alex Pierola?

20 A. Si.

21 Q. What about terminations, could you make them on your
22 own?

23 A. No.

24 Q. Did you have to seek permission from Alex or Davys?

25 A. I called Davys, and they would call Alex, and then Alex

1 called Kenny Brown.

2 Q. Now what do you do?

3 A. The same.

4 Q. Same people?

5 A. No.

6 Q. Who would it be with?

7 A. Maximo Pierola.

8 Q. He is the owner and president of the Company?

9 A. Yes.

10 MR. GODOY: Your Honor, now I would move for permission
11 to examine this witness pursuant to 611(c).

12 JUDGE AMCHAN: Granted. I'll just explain to the
13 witness all this means is that Mr. Godoy can ask him leading
14 questions. Those are questions that suggest an answer.

15 Q. BY MR. GODOY: Mr. Berganza, am I correct that Tito
16 Contractors has a contract with MES in Montgomery County, or
17 Maryland Environmental Services?

18 A. Yes.

19 Q. And this provides laborers at Montgomery County
20 Recycling Center, correct?

21 A. Yes.

22 Q. And the Montgomery County Recycling Center is located in
23 the Shady Grove Transfer Station; is that right?

24 A. Correct.

25 Q. And the Tito employees help run the Montgomery County

1 Recycling Center, correct?

2 A. Correct.

3 Q. The employees sort materials?

4 A. Correct.

5 Q. These are recycling materials?

6 A. Yes.

7 Q. I believe you said earlier that there are currently 29

8 employees that work there?

9 A. Yes.

10 Q. The employees are sorting off of one conveyor belt line,

11 correct?

12 A. Yes.

13 Q. Tito Contractors also does recycling work in

14 Cockeysville, Maryland; is that right?

15 A. That's what -- that's my understanding, yes.

16 Q. This work is done for MES; is that right?

17 A. That's what I understand.

18 Q. Do you know if the work is the Baltimore County

19 Recycling facility?

20 A. No.

21 Q. Do you know how many employees work there?

22 A. No.

23 Q. You have no idea?

24 A. No.

25 Q. Do you know if any of the employees that work for you or

1 have worked for you at the recycling center have ever worked
2 at the Cockeysville facility?

3 A. Yes. I have one right now.

4 Q. Who would that be?

5 A. Elisa Martinez.

6 Q. Have you ever been to that facility?

7 A. In Cockeysville, no.

8 Q. Am I also correct that Tito Contractors also does
9 composting and grinding work?

10 THE INTERPRETER: What was the word again?

11 MR. GODOY: Composting and grinding.

12 THE INTERPRETER: Again?

13 MR. GODOY: Composting.

14 THE INTERPRETER: Composting. And what's the other one?

15 MR. GODOY: Grinding.

16 THE INTERPRETER: Grinding.

17 MR. GODOY: I believe he'll know what it is.

18 THE INTERPRETER: I'm sorry?

19 MR. GODOY: He'll know what it is.

20 THE INTERPRETER: Okay, composting and grinding.

21 THE WITNESS: I think so.

22 Q. BY MR. GODOY: This is at the Montgomery County
23 Recycling Center -- I'm sorry, the Shady Grove Transfer
24 Station, correct?

25 A. Yes.

1 Q. This is also for MES, correct?

2 A. Yes.

3 Q. Just for clarification, you understand both English and
4 Spanish, correct? You read it and write it?

5 A. Yes.

6 Q. And you also speak it?

7 A. Um-hum.

8 JUDGE AMCHAN: Wait, you're asking him --

9 MS. SILAS: That wasn't an audible answer.

10 JUDGE AMCHAN: You're asking whether he speaks English
11 and --

12 MR. GODOY: And understands it. I'm just asking, Your
13 Honor, just for --

14 JUDGE AMCHAN: Well, do you speak and understand English
15 as well as you speak and understand Spanish?

16 THE WITNESS: No.

17 Q. BY MR. GODOY: Mr. Berganza, the composting and grinding
18 work isn't done in the same building as the recycling work;
19 is that correct?

20 A. When you say grinding, what are you exactly referring
21 to?

22 Q. I'm talking about the grinding and compounding --
23 composting work that's done at the Montgomery County
24 Transfer Station or the Shady Grove Transfer Station.

25 A. No. We only separate material. We don't do any other

1 type of job.

2 Q. Just so I'm clear, the Montgomery -- or the Shady Grove
3 Transfer Station is a large area of land, and the Montgomery
4 County Recycling Center is a building in that transfer
5 station; is that correct?

6 A. There is a big area where they handling the recycling
7 for all the residents, but we don't work there. We work in
8 the processing plant.

9 Q. That's just one building within many buildings; is that
10 right?

11 A. Correct.

12 Q. Do you know how many employees work at the grinding and
13 compounding area?

14 MS. JANDRAIN: Objection. I think he just testified
15 that they don't do that at Shady Grove.

16 JUDGE AMCHAN: I thought he said that -- it may mean
17 that Tito Contractors doesn't do that, but I guess he's
18 asking whether he knows whether there is any grinding and
19 composting done there.

20 MR. GODOY: I think there's been a misunderstanding of
21 the testimony.

22 Q. BY MR. GODOY: Mr. Berganza, just to clarify again, Tito
23 Contractors does composting and grinding work at the Shady
24 Grove Transfer Station; is that correct?

25 A. We call it the up on the hill transfer station.

1 Q. And that's separate and apart. It's done in an area
2 separate from where you do your work in Montgomery County
3 Recycling Center; is that right?

4 A. Correcto.

5 Q. But it's on the same property?

6 A. Correct.

7 Q. Do you know how many Tito Contractors employees work in
8 grinding and composting?

9 A. No.

10 Q. Do you have any employees that currently work for you
11 that have worked there in grinding and compounding --
12 composting?

13 A. No.

14 Q. Mr. Berganza, now I want to ask you about Tito
15 Contractors and management. You kind of hit a little bit of
16 it. Am I correct that you report to a number of individuals
17 and one of them is Maximo Pierola?

18 A. Before, I reported to two, Davys Ramos and Alex Pierola.

19 Q. Right. But my question is you report to Maximo,
20 correct?

21 A. Now, yes.

22 Q. Maximo has always been the president and owner, as long
23 as you've worked there?

24 A. That's my understanding, yes.

25 Q. And Maximo's nickname is Tito?

1 A. Yes.

2 Q. You have a nickname, too, right?

3 A. At work they don't call me by my nickname, but my family
4 does.

5 Q. So Machin (ph.), is that anything?

6 A. Yes.

7 Q. It's like macho, no? All right. Mr. Berganza, am I
8 correct that Maximo can decide which employees get hired or
9 fired?

10 THE INTERPRETER: I'm sorry?

11 Q. BY MR. GODOY: Maximo can decide which employees get
12 hired or fired?

13 A. I have no information whether he can or cannot. The
14 management is seldom in the office, and I handle myself in
15 the office.

16 Q. So you have no idea who decides who hires and fires?

17 A. Sometimes, when they send any staff to my job and I see
18 that they are doing their work properly, I could recommend
19 to them to be hired.

20 Q. What about when you recommend for them to be fired, who
21 do you make that to?

22 A. To the supervisor that I mentioned before.

23 Q. So Alex had the authority to hire and fire; is that
24 right?

25 A. I think so.

1 Q. And this would be Alex Pierola?

2 A. Yes.

3 Q. Now, do you know who makes that decision?

4 A. We make it between both of us, myself and

5 Maximo Pierola.

6 Q. Alex Pierola is the vice president of Tito Contractors,

7 correct?

8 A. That's my understanding, yes.

9 Q. And he is the son of Maximo?

10 A. Yes.

11 Q. He helps run the Company; is that right?

12 A. Yes.

13 Q. Among the -- strike that, I'm sorry.

14 Am I correct that Alex also writes termination letters?

15 A. I'm not sure about that. Only they send me the

16 termination letter. I don't know who writes the letter. I

17 don't know. I only read the signature of the person signing

18 the letter, but I don't know if he is the one who types the

19 letter.

20 Q. But it's his signature, is that right, of Alex Pierola?

21 A. Yes.

22 Q. Davys Ramos, she is another person that you said you

23 worked for. Who is she?

24 A. I understand that she's the payroll manager.

25 Q. She is someone that you communicate with on a daily

1 basis?

2 A. Not anymore now, but before yes.

3 Q. What sort of communication would you have with

4 Davys Ramos before?

5 A. When I needed extra help, I will let her know so they
6 can send me employees. And when I have any problems, I will
7 let her know so she can help.

8 Q. Just so I'm clear, this change where you used to report
9 to Alex and Davys, and now you report to Alex, when did that
10 changeover occur?

11 A. When I used to report to them or when I stopped
12 reporting to them?

13 Q. When you stopped reporting to Alex and Davys.

14 A. Like four or five months ago it happened.

15 Q. So are we saying June? Are we saying May?

16 A. More or less.

17 Q. Now, Kenny Brown, do you report to him?

18 A. Usually not.

19 Q. I believe you said that he occasionally makes decisions
20 on whether to terminate employees?

21 A. It's between them. I used to get in touch with Davys,
22 then Davys with Alex, and then Kenny Brown in the office.

23 Q. How do you know this?

24 A. Davys Ramos would call me back, and he [sic] would tell
25 me I already told Alex and Ken Brown.

1 Q. And you also work with somebody by the name of
2 Stedson Linkous; is that right?

3 A. Correct.

4 Q. Who is he?

5 A. Office of safety, something like that.

6 Q. He's in charge of safety and security?

7 A. That's my understanding, yes.

8 Q. You deal with him quite a bit, right?

9 A. Usually, yes.

10 Q. Where does he work?

11 A. Most of the time, I believe he works in the office.

12 Q. This is the office located in Washington, D.C.?

13 A. Correct.

14 Q. And it's also where Davys works?

15 A. Correct.

16 Q. And Alex and Maximo?

17 A. Correct.

18 Q. And Kenny Brown?

19 A. Correct.

20 Q. Am I correct that Stedson Linkous is also the purchasing
21 manager?

22 A. Correct.

23 Q. And he buys things, for instance, goggles, hats, things
24 that you might need, correct?

25 A. Yes.

1 Q. So if you have an issue that gloves are bad that the
2 employees may use, that they need a new hat or helmet, you
3 would call him and he would buy it; is that correct?

4 A. Correct.

5 Q. I want to direct your attention back to the Montgomery
6 Recycling Center where you work. Am I correct there are
7 officials from MES that work there?

8 A. Yes.

9 Q. This is because MES is a customer of Tito Contractors,
10 correct?

11 A. Correct.

12 Q. And David Wyatt is one of the officials that works
13 there, yes?

14 A. Yes.

15 Q. And he's the operations manager; is that correct?

16 A. Yes.

17 Q. And Mark Wheeler is another individual from MES that
18 works there?

19 A. Correct.

20 Q. He is the operations supervisor, right?

21 A. Correct.

22 Q. Am I also correct that in addition to the Tito
23 employees, there are also MES employees who work there,
24 correct?

25 A. Correct.

1 Q. In October 2013, how many employees were there that
2 worked for MES?

3 A. Usually, it always has been the same amount, around 10
4 or 11.

5 Q. Is this counting David Wyatt and Mark Wheeler?

6 A. I think so.

7 Q. So there's nine MES line employees; is that correct?

8 A. No, three.

9 Q. So three work on the line. And is that the case in
10 October of 2013?

11 A. I think so.

12 Q. Is that also the case now?

13 A. Yes.

14 Q. Now, you work -- you don't report to David Wyatt or
15 Mark Wheeler, do you?

16 A. When there is more problems with Tito's employees that
17 involve MES employees, yes.

18 Q. But they are not your bosses, are they?

19 A. I understand that they're not, but we just work
20 together.

21 Q. But you communicate quite a bit, yes?

22 A. Yes.

23 Q. The recycling center has several stations and areas,
24 correct?

25 A. Correct.

1 Q. How many are there?

2 A. Around five or six.

3 Q. Presort is the first one; is that right?

4 A. Correct.

5 Q. Before you get to presort, though, there is a tipping
6 floor, yes?

7 THE INTERPRETER: I'm sorry?

8 Q. BY MR. GODOY: Before you get to the presort, there is a
9 tipping floor?

10 A. Yes.

11 Q. So it's called the tipping floor because that's where
12 the trucks come and tip their garbage; is that right?

13 A. Correct.

14 Q. And then that garbage goes up on a conveyor belt into
15 the presort station, yes?

16 A. Correct.

17 Q. And the employees in presort rip open the bags and take
18 out the garbage, yes?

19 A. Si.

20 Q. Where does it go from there?

21 A. To light sort.

22 Q. And what is light sort?

23 A. That's where they separate the soft material, plastic
24 and aluminum.

25 Q. What do you mean by suave -- sorry, that's the Spanish

1 word.

2 THE INTERPRETER: Softer?

3 Q. BY MR. GODOY: Softer.

4 A. They refer to that's the material that they get over
5 there. It's not heavy and it's cleaner.

6 Q. And then from the light sort station, where does it go
7 next?

8 A. It goes down to the Station 37A.

9 Q. What is that?

10 A. That is another line where five people work there and
11 they are separating the same.

12 Q. So it is whatever is left over from light sort goes into
13 37A?

14 A. Correct.

15 Q. You said there were five employees that work in 37A?

16 A. Correct.

17 Q. How many work in light sort?

18 A. Nine.

19 Q. And in presort?

20 A. Seven.

21 Q. Has this number been stable?

22 A. Sometimes it changes. When MES tells me that they need
23 an extra person in presort, there is an extra person in
24 presort.

25 Q. There's also a glass area; is that right?

1 A. Correct.

2 Q. How many are there?

3 A. Three.

4 Q. So three employees. And there is also a flower pot
5 station?

6 A. Correct.

7 Q. How many are there? How many employees?

8 A. Two.

9 Q. There is a lid station, isn't there?

10 THE INTERPRETER: I'm sorry?

11 Q. BY MR. GODOY: A lid station? Yes?

12 A. Yes.

13 Q. How many are there?

14 A. One.

15 Q. Are there any other stations I've missed?

16 A. No.

17 Q. Now, the number of employees you gave me, are these Tito
18 employees, or are they Tito employee and MES employees?

19 A. Only Tito's.

20 Q. You said that there were three line employees for MES.
21 Where do they work?

22 A. One works in presorts, the other one works in light
23 sort, and the other one works at the glass station.

24 Q. In October of 2013, who were the MES employees? In
25 October of 2013, who were those MES employees?

1 A. I wouldn't be able to tell you, because they have been
2 -- they will have to replace some people at some point, and
3 I don't know. I don't get involved in that.

4 Q. Am I correct that Juana Rosales is an MES or used to be
5 an MES line employee?

6 A. She is an employee, which she used to work in the line.

7 Q. And she used to work in a line at least until
8 January 2014, correct?

9 A. I think so.

10 Q. Juana Rosales is also known as Juana Garcia, correct?

11 A. I think so.

12 Q. She is related to Rosa Garcia, correct?

13 A. I don't know.

14 Q. Norma Garcia, do you know who that is?

15 A. Yes.

16 Q. Is she an MES line employee?

17 A. Yes.

18 Q. She worked there up until at least -- is she still
19 working as an MES employee?

20 A. Yes.

21 Q. Am I correct that Norma and Juana would work on the
22 light sort station and rotate during the day?

23 A. Yes.

24 Q. So they would work at one station and rotate, switch to
25 another; is that correct?

1 A. Correct.

2 Q. Was there an MES line employee named Hilda?

3 THE INTERPRETER: What's the name?

4 Q. BY MR. GODOY: Hilda.

5 A. Yes.

6 Q. What is her last name?

7 A. I don't know if it's Valdez or Rodriguez.

8 Q. Does she also rotate on the line?

9 A. She doesn't work in the line.

10 Q. Now, the MES employees are issued radios; is that right?

11 THE INTERPRETER: Are issued what?

12 Q. BY MR. GODOY: Radios or walkie-talkies?

13 A. Yes. They use a radio and I do as well.

14 Q. You can communicate with them on that radio, yes?

15 A. Correct.

16 Q. And the MES line employees supervises the Tito employee
17 while they work, yes?

18 A. Correct.

19 Q. And so if an employee has to use the restroom, the MES
20 employee has to give permission, correct?

21 A. Correct.

22 Q. But if the employee needs to do something more serious,
23 has to leave, is sick, she would call you and you would give
24 permission, correct?

25 A. Correct.

1 Q. This is because employees can't call you, because they
2 don't have radios, yes?

3 A. Correct.

4 JUDGE AMCHAN: The three MES employees that work on the
5 production line, do they have radios?

6 THE WITNESS: Correct.

7 Q. BY MR. GODOY: Now, Mr. Berganza, I want to ask you
8 about Mr. Sandro Baiza, sitting to my right. You know who
9 he is, yes?

10 A. Si.

11 Q. And you also know Mr. James Coats?

12 A. Yes.

13 Q. Just so I'm clear, I don't know if he answered the
14 question with a translation. You're familiar with
15 Sandro Baiza, yes?

16 A. No.

17 Q. Sandro Baiza, sitting to my right.

18 A. Yes.

19 Q. So you know who Sandro Baiza is?

20 A. Si.

21 Q. Okay. And you know that James and Sandro are both
22 representatives of the Painters Union, correct?

23 A. Yes.

24 Q. They were introduced to you by Mauricio Bautista,
25 correct?

1 A. Correct.

2 Q. And Mauricio Bautista worked for Tito Contractors,
3 correct?

4 A. Correct.

5 Q. He used to work as a painter, correct?

6 A. Supervisor.

7 Q. Supervisor of what?

8 A. Carpentry.

9 Q. So he works in the construction division, yes?

10 A. Correct.

11 Q. You know him because you used to work with him when you
12 worked on construction, correct?

13 A. Correct.

14 Q. You guys are friends?

15 A. We used to be.

16 Q. Now, in September of 2013, Mauricio told you about the
17 Union, correct?

18 A. I think it was during that time.

19 Q. He told you that the Union was trying to organize
20 employees and that he supported the Union, correct?

21 A. Correct.

22 Q. He also invited you to come to a meeting, correct?

23 A. Correct.

24 Q. He told you he wanted to talk to you about organizing
25 the MES employees, correct?

1 A. Not the MES, but Tito's.

2 Q. But in October of 2013, you went to a meeting where you
3 met Sandro Baiza, correct?

4 A. I think it was in that month.

5 Q. You went with Mauricio, correct?

6 A. Correct.

7 Q. Am I correct that you met at a restaurant called
8 Elena's Pupusas or Irene's Pupusas?

9 A. Correct.

10 Q. This was the first time you had met Sandro Baiza,
11 correct?

12 A. Correct.

13 Q. When you met Sandro, he told you he was trying to
14 organize Tito Contractors, yes?

15 A. Correct.

16 Q. And he told you that he was also trying to organize the
17 Tito employees at the Montgomery County Recycling Center,
18 yes?

19 A. He only told me that he was trying to organize the
20 company of Tito Contractors.

21 Q. But he asked you to have some employees sign union
22 cards, didn't he?

23 A. Correct.

24 Q. And these employees worked for you at MES, correct?

25 A. Correct.

1 Q. Now, Sandro, at that point, asked you to sign a union
2 card, yes?

3 A. Correct.

4 Q. And you signed the card, correct?

5 A. Correct.

6 Q. And the day that the meeting occurred is when you signed
7 the card?

8 A. Correct.

9 (General Counsel's Exhibit 72 marked for identification.)

10 Q. BY MR. GODOY: I'm going show you what's been marked for
11 identification as General Counsel's Exhibit 72.

12 Mr. Berganza, am I correct this is a copy of your
13 authorization card that you signed on October 18th of 2013?

14 A. Correct.

15 MR. GODOY: Your Honor, I would move for the
16 introduction of General Counsel Exhibit 72 into the record.

17 MS. JANDRAIN: No objection.

18 JUDGE AMCHAN: It's received.

19 (General Counsel's Exhibit 72 received in evidence.)

20 MR. GODOY: Thank you.

21 Q. BY MR. GODOY: Do you recall the employees who Mr. Baiza
22 asked you to sign the cards?

23 A. Yes.

24 Q. Who were they?

25 A. Mariela Valdez, Martha Serpas, Anibal Diaz.

1 Q. And you agreed to sign -- to get them to sign, correct?

2 A. Correct.

3 JUDGE AMCHAN: I didn't catch -- you asked him he
4 agreed?

5 MR. GODOY: To get them to sign.

6 Q. BY MR. GODOY: During that meeting, you also asked him
7 to tell you which employees had signed cards already,
8 correct?

9 A. Correct.

10 Q. This was because he told you that he already signed up
11 some MES employees, correct?

12 A. Correct.

13 Q. When I say MES, I mean Tito employees that work at MES.
14 Yes?

15 A. Yes.

16 Q. The day after the meeting occurred, you spoke to
17 employees for Sandro, correct?

18 A. Yes.

19 Q. So you spoke to Martha Serpas, Anibal Diaz, and
20 Mariela Valdez, correct?

21 A. Correct.

22 Q. After you spoke to them, you called Sandro, correct?

23 A. Correct.

24 Q. You told him that the employees were scared to talk to
25 you and didn't want to sign a card, yes?

1 A. No. I told him that the people didn't want to sign the
2 card because they did not believe in the Union and they did
3 not know what promises they were making.

4 Q. I see, okay. Now, Sandro told you to tell them not to
5 worry and to tell them that the Union can protect them if
6 they sign a card, correct?

7 A. Correct.

8 Q. You didn't want to help anymore, correct?

9 A. I wanted to deny a little bit -- decline a little bit,
10 yes. I did not want to help on that day.

11 Q. But James Coats then called you on the phone, correct?

12 A. He called me on the same day, during the night.

13 Q. He asked you to continue helping the Union, correct?

14 A. Correct.

15 Q. And he wanted you to help by getting these -- talking to
16 these employees, correct?

17 A. Correct.

18 Q. During the call, you told him that you would help him,
19 but only if he gave you the names of employees who had
20 already signed, correct?

21 A. Correct.

22 Q. Am I correct that you asked James for specific names of
23 employees?

24 A. Yes, correct.

25 Q. Am I correct that one of the names you asked about was

1 Elizabeth Lemus?

2 A. Correct.

3 Q. You may have asked about Maria Elena Chavez, correct?

4 A. Correct.

5 Q. This is because you saw her as a leader that employees
6 followed, correct?

7 A. No. No, that was because those members that worked at
8 the yard, the one that has most strength at work, and they
9 kind of pull together to keep the group.

10 Q. So you never said that you may have asked because she
11 was one of the leaders; other employees did as she said?

12 A. No.

13 Q. Mr. Berganza, I'm showing you --

14 MR. GODOY: Your Honor, I'm just marking it for
15 identification purposes only as General Counsel Exhibit 87.
16 (General Counsel's Exhibit 87 marked for identification.)

17 Q. BY MR. GODOY: Mr. Berganza, I'm showing you what's been
18 -- is this a copy of your affidavit?

19 A. Yes.

20 Q. And this is your signature?

21 A. Yes.

22 Q. On the 16th page. And when you gave this affidavit, you
23 gave it in the presence of Ms. Jandrain, correct?

24 A. Correct.

25 Q. You gave it in your own language, yes?

1 A. Correct.

2 Q. Am I correct that you said if I asked about Elena --

3 MR. GODOY: Your Honor, I don't know if you'd like to
4 have -- it's in Spanish, and I could translate it or if you
5 want me to have her translate what he said in Spanish.

6 JUDGE AMCHAN: I'll leave it up to you. If it's clear
7 to --

8 MS. JANDRAIN: Can you start with the sentence before
9 that, so that it's complete?

10 MR. GODOY: It's line 8. I will ask it in Spanish and
11 you will --

12 THE INTERPRETER: Translate in English.

13 JUDGE AMCHAN: He can ask him for whatever he wants to
14 ask him, whether it's in it. And then you --

15 MS. JANDRAIN: Okay.

16 JUDGE AMCHAN: -- will have the opportunity to augment
17 it.

18 Q. BY MR. GODOY: Isn't it true, Mr. Berganza, that you
19 said (in Spanish) "I do not remember, but it's possible
20 that, yes, I did ask James if Elena signed the card."

21 Is that true?

22 A. I remember that I said it like that.

23 Q. And you also asked (untranslated). Did you say that?

24 A. I said that, yeah.

25 MR. GODOY: Now, let me have her phrase that.

1 THE INTERPRETER: Which one is it? Okay. "Yes, I did
2 ask about Elena. It could be because it's heard in the
3 recycling center that she is a leader and that she is the
4 one who tells the other employees and the employees do it."

5 MS. JANDRAIN: Can I just -- I think for clarification
6 purposes, that beginning clause, I think that may not be the
7 accurate translation.

8 MR. GODOY: I agree. It's if, instead of yes, "If I
9 asked."

10 THE INTERPRETER: Oh, okay. "If I asked about Elena, it
11 could be because it's heard in the recycling center that she
12 is a leader and what she said to the employees the employees
13 do."

14 Q. BY MR. GODOY: Mr. Berganza, you said this?

15 JUDGE AMCHAN: We're talking about Maria Elena Chavez?

16 Q. BY MR. GODOY: Mr. Berganza, you said this about
17 Mrs. Maria Elena Chavez?

18 A. Yes.

19 Q. Now, upon asking James Coats who else signed, he didn't
20 want to tell you, correct?

21 A. At the beginning, he told that he couldn't tell me
22 because I was a supervisor for the Company and I could go
23 back to the Company to tell Tito.

24 Q. He said this to you?

25 A. Then he told me I could only give you one name, Maria.

1 Q. So he gave you the name of Maria, correct? And when he
2 gave you that name, am I correct there were several
3 employees by the name of Maria that worked at the recycling
4 center? Were there --

5 MS. JANDRAIN: Can he finish?

6 MR. GODOY: It's not a responsive answer, Your Honor.

7 MS. JANDRAIN: How do you know? She hasn't even
8 translated.

9 MS. SILAS: It's in Spanish.

10 JUDGE AMCHAN: Well, we have to wait for the
11 translation.

12 MR. GREENBAUM: Let him finish his answer.

13 THE WITNESS: Can you repeat the question?

14 Q. BY MR. GODOY: When he said this to you, there were
15 several Marias that worked at the recycling center, correct?

16 A. Correct.

17 Q. Am I correct, Mr. Berganza, that after you spoke to
18 James Coats -- well, during the call, you agreed to speak to
19 the three employees he wanted you to speak to, correct?

20 A. Correct.

21 Q. And you went back and spoke to them, yes?

22 A. Correct.

23 Q. You were able to get them to sign union cards for you,
24 yes?

25 A. Correct.

1 Q. You called James back and you told him that you had the
2 cards, correct?

3 A. Correct.

4 Q. You gave him back the cards, the signed cards, yes?

5 A. Correct.

6 Q. From the three employees?

7 A. Correct.

8 Q. About a week later after that, he called you back, James
9 that is, and asked you to get two more employees to sign
10 cards, correct?

11 A. Correct.

12 Q. He asked you to sign up Alicia Reyes and Sylvia Sandino,
13 yes?

14 A. Alicia Reyes and Sylvia Sandino.

15 Q. But you no longer wanted to help, correct?

16 THE INTERPRETER: I'm sorry?

17 Q. BY MR. GODOY: You no longer wanted to help do it?

18 A. Correct.

19 Q. You no longer wanted to pick up your phone when they
20 would call, yes?

21 JUDGE AMCHAN: When who called?

22 Q. BY MR. GODOY: James or Sandro.

23 A. Only James called me, and I did not answer.

24 Q. I see.

25 (General Counsel's Exhibit 62 marked for identification.)

1 Q. BY MR. GODOY: I'm going to show you what's been marked
2 for identification as General Counsel Exhibit 62.

3 Mr. Berganza, are these notes that you took?

4 A. Correct.

5 Q. When did you create these notes?

6 A. I always create those notes in the computer every time I
7 have a conversation with people.

8 Q. So you always take notes when you have conversations?

9 A. Not usually. It is always when I have a conversation
10 with my employees or something that has to do with my
11 employees.

12 Q. This is done on your work computer?

13 A. Correct.

14 Q. And then you print it?

15 A. Correct.

16 Q. Do you save it on your hard drive?

17 A. Possibly, possibly not.

18 Q. And then what do you do with it?

19 A. I put it in a file.

20 MR. GODOY: Your Honor, I would move for the admission
21 of General Counsel Exhibit 62 into the record.

22 MS. JANDRAIN: No objection.

23 JUDGE AMCHAN: It's received.

24 (General Counsel's Exhibit 62 received in evidence.)

25 MR. GODOY: Thank you, Your Honor.

1 Q. BY MR. GODOY: The note, itself, describes the
2 individuals that Sandro asked you to sign or get to sign
3 union cards, correct?

4 A. Correct.

5 Q. And then the two employees that he asked you -- that
6 James asked you to sign up, correct?

7 A. Correct.

8 Q. Now, Mr. Berganza, this document, was it created as part
9 of an investigation for the National Labor Relations Board?

10 A. If they created it or I did?

11 Q. If you created it. I'm talking about General Counsel
12 Exhibit 62.

13 A. I did not create it for that. I simply did it for me.

14 Q. I see. Now, Mr. Berganza, you were scared to talk,
15 according to your affidavit, to talk to Sandro and James; is
16 that right?

17 A. About what?

18 Q. About other employees signing -- I'm sorry, strike that
19 question.

20 Am I correct that you were scared to go or fearful to
21 speak to employees about signing union cards?

22 A. Yes, I was afraid to speak with employees.

23 Q. This was because word travels quickly in the recycling
24 center, yes?

25 A. I believe that within themselves, yes.

1 Q. You would agree that employees talk about matters
2 affecting their employment, yes?

3 A. I don't hear much, but I think so.

4 Q. Rumors are very common in the workplace; is that right?

5 A. Not frequently.

6 Q. Would you agree with --

7 MR. GODOY: I'm going to show it to him, show him
8 General Counsel Exhibit 65.

9 Q. BY MR. GODOY: Mr. Berganza, this is a position
10 statement that was filed by Mrs. Jandrain, who is sitting
11 here, for a charge that involved you. Do you recall what
12 the charge is about?

13 A. No.

14 Q. This was about you filing -- the charge was against the
15 Union. It involved you soliciting and getting cards for the
16 Union.

17 MS. JANDRAIN: The copy we have only has two pages.

18 MR. GODOY: Oh, sorry. Your Honor, does yours have two
19 pages?

20 JUDGE AMCHAN: Two.

21 MS. SILAS: There should be one in your stack.

22 (Pause.)

23 THE INTERPRETER: He has a question.

24 Q. BY MR. GODOY: Yes?

25 A. Why did they press charges against me?

1 Q. I'm sorry?

2 A. Why are they placing charges against me?

3 MS. JANDRAIN: Can you clarify?

4 Q. BY MR. GODOY: These charges are not about you. They
5 are not against you. It was a charge that was filed against
6 the Union. If I can turn your attention to page 3 of 4.

7 A. I only got two pages.

8 (Pause.)

9 Q. BY MR. GODOY: The third paragraph of the third page
10 says that "Given the atmosphere and environment at MES, and
11 the propensity of employees to talk about matters affecting
12 their employment, the impact of Mr. Berganza's solicitation
13 of cards likely extended beyond the three employees with
14 whom he spoke." Do you agree with that statement,
15 Mr. Berganza?

16 A. That it was more than three cards that I gave up?

17 Q. No. The accuracy of that statement.

18 A. Yes.

19 Q. Mr. Berganza, I want to ask you about your duties as a
20 supervisor when you discipline employees. Am I correct that
21 when you issue an employee a discipline, it is to correct
22 something they are doing wrong?

23 THE INTERPRETER: Issue a what? I'm sorry.

24 MR. GODOY: A discipline.

25 THE WITNESS: Correct.

1 Q. BY MR. GODOY: When you do that, you advise the employee
2 of what they had done wrong, correct?

3 A. Correct.

4 Q. With respect to removing employees, MES officials
5 David Wyatt and Mark Wheeler can request an employee be
6 removed, yes?

7 A. Correct.

8 Q. Is it either one or is it David Wyatt only?

9 A. Either one.

10 Q. These requests have been made to you, correct?

11 A. Correct.

12 Q. When MES requests that an employee be removed, it
13 doesn't necessarily mean that they have to be terminated,
14 does it?

15 A. They only tell me to have the employee removed from
16 recycling.

17 Q. So when an employee is removed, they don't need to be
18 terminated from Tito Contractors; is that right?

19 A. Depends on the infraction.

20 Q. Mr. Berganza, I now want to direct your attention to
21 employee performance, productivity. Am I correct that in
22 September of 2013, you began testing the performance of
23 employees?

24 A. Correct.

25 Q. This was the first time you had done this, yes?

1 A. Correct.

2 Q. And you did this by seeing how many hoppers an employee
3 could fill, yes?

4 A. Correct.

5 Q. And it was how many hoppers employees could fill over
6 the course of their shift, correct?

7 A. Correct.

8 Q. How long is a shift?

9 A. Ten hours.

10 Q. Am I correct that a hopper is a large metal or plastic
11 container?

12 A. Correct.

13 Q. So employees have to fill the hopper by sorting a
14 specific type of material, yes?

15 A. Correct.

16 (General Counsel's Exhibit 14 marked for identification.)

17 Q. BY MR. GODOY: Mr. Berganza, I'm handing you what's been
18 marked as General Counsel Exhibit 14. Am I correct that
19 these are test results for the performance test that you
20 conducted?

21 A. Correct.

22 Q. This performance test was carried out between
23 September 9, 2013, until November 27, 2013?

24 A. Correct.

25 Q. So am I correct that the name -- there's several rows

1 and columns. The column on the left-hand side of the
2 document has the names of the employees; is that right?

3 A. Correct.

4 Q. To the right of that is what appears to be a date; is
5 that correct?

6 A. Correct.

7 Q. So, for instance, Elcy Bargas would be September 9,
8 2013?

9 A. Correct.

10 Q. On that date, she filled seven hoppers; is that right?

11 A. Correct.

12 Q. She was retested again on September 10, 2013?

13 A. Correct.

14 Q. On that date, she again filled seven hoppers, yes?

15 A. Correct.

16 MR. GODOY: Your Honor, I'd move for the admission of
17 General Counsel Exhibit 14.

18 MS. JANDRAIN: No objection.

19 JUDGE AMCHAN: Received.

20 (General Counsel's Exhibit 14 received in evidence.)

21 MR. GODOY: Thank you, Your Honor.

22 Q. BY MR. GODOY: This test was done on Line 37A, yes?

23 A. Correct.

24 Q. So employees were placed at that line for the entire day
25 during while this test was taken, right?

1 A. Correct.

2 Q. This test measures how well an employee can perform,
3 correct?

4 A. Correct.

5 Q. MES doesn't require that this test be done, correct?

6 A. No.

7 Q. So you took it upon yourself to do this?

8 A. It was from all the employees.

9 Q. The employees asked to be tested?

10 A. Correct.

11 Q. Now, Mr. Berganza, I want to direct your attention now
12 to Maria Raquel Sanchez. Am I correct she was an employee
13 of Tito Contractors?

14 A. Correct.

15 Q. And she worked for you at the recycling plant, yes?

16 A. She used to work for me.

17 Q. She used to work sorting recyclable materials, yes?

18 A. Correct.

19 Q. She was hired to work on May 6, 2013, correct?

20 A. I think so.

21 Q. Do you know if she had previously worked for Tito
22 Contractors?

23 A. I think so. She used to work before.

24 Q. In the construction division, yes?

25 A. Yes.

1 Q. You fired her on October 30, 2013, yes?

2 A. Required by David Wyatt.

3 Q. Now, according to your affidavit, the reason you gave
4 for terminating Maria Raquel Sanchez was that she was
5 letting too much material pass on the line; is that right?

6 A. No, there is a mistake there. It wasn't her. She was
7 fired for another reason.

8 Q. What was she fired for then?

9 A. Can I say bad words?

10 Q. Yes, you may.

11 A. Because she called son of a bitch, Juana Rosales.

12 JUDGE AMCHAN: I didn't hear it. I didn't hear it.

13 THE INTERPRETER: She called son of a bitch to
14 Juana Rosales.

15 Q. BY MR. GODOY: Juana Rosales is the MES line leader?

16 A. At that time, she used the word at the line.

17 Q. Just so we're clear, Juana Rosales and Juana Garcia are
18 the same individuals, yes?

19 A. Correct.

20 Q. According to you, David Wyatt asked you to remove
21 Maria Raquel from the line, yes?

22 A. No. Norma and Juana told David what Raquel told Juana.
23 Then they came to be and he told me to take it out of there
24 because he did not want people there with that attitude.

25 Q. So your testimony is that Juana Rosales went to David,

1 reported the incident, as did Norma Garcia?

2 A. That's what I understand.

3 JUDGE AMCHAN: So the only thing you know is what
4 David Wyatt told you, correct?

5 THE WITNESS: He told me that Norma and Juana told him
6 that Raquel called her son of a bitch.

7 Q. BY MR. GODOY: What else did David Wyatt tell you?

8 A. To take her out, that he didn't want anyone there with
9 that attitude.

10 Q. When David told you this, you sent an e-mail to
11 Davys Ramos and Stedson Linkous; is that right?

12 A. Correct.

13 Q. In the e-mail -- well, I'll show you.

14 (General Counsel's Exhibit 15 marked for identification.)

15 Q. BY MR. GODOY: I'm showing you what's been marked as
16 General Counsel Exhibit 15. Mr. Berganza, is that a copy of
17 the e-mail that you sent to Stedson Linkous and Davys Ramos
18 regarding --

19 A. Yes.

20 Q. -- the termination of Maria Raquel?

21 A. Correct.

22 Q. Your e-mail says that David Wyatt, he was told that
23 Maria Sanchez does not respect him and that she is a slowly
24 worker.

25 A. That's what Juana and Norma told David.

1 Q. Do you know if David removed her simply because of her
2 disrespectful statement or because she was a slow worker?

3 A. For her disrespectful behavior.

4 MR. GODOY: Your Honor, I'd move for the introduction or
5 the admission of General Counsel Exhibit 15 into the record.

6 MS. JANDRAIN: No objection.

7 (General Counsel's Exhibit 15 received in evidence.)

8 JUDGE AMCHAN: I guess I'm a little confused about the
9 exchange about do you know why David Wyatt removed her. My
10 understanding is David Wyatt told him to remove her. And
11 the only thing he would know is what David Wyatt said to
12 him; am I correct?

13 MR. GODOY: That's right, Your Honor.

14 JUDGE AMCHAN: You weren't asking him to postulate what
15 was going on in David Wyatt's mind. You're just asking him
16 what David Wyatt said to him?

17 MR. GODOY: I'm simply asking him what David Wyatt told
18 him and why he [sic] was removed.

19 JUDGE AMCHAN: Okay.

20 MR. GODOY: Yes, Your Honor.

21 Q. BY MR. GODOY: When did David Wyatt tell you about
22 what's noted in your e-mail here as General Counsel
23 Exhibit 15?

24 A. I think it was on that same day.

25 Q. Am I correct that prior to her termination on

1 October 30th, Maria Raquel had never had a disciplinary
2 issue?

3 A. That I remember, no.

4 Q. She had never been accused of working too slowly,
5 either?

6 A. She did work slow, but I only verbally talked to her
7 about it. But I didn't take notes about it.

8 Q. In other words, you didn't take notes of it on your
9 computer?

10 A. Not at that moment, because I went to do something that
11 it was an emergency in the plant.

12 Q. What was that?

13 A. In some locations, we call it shoot (ph.), and they get
14 clocked, and I have to go and clock them.

15 JUDGE AMCHAN: Did you talk to her more than once prior
16 to October 30th about working too slow?

17 THE WITNESS: I think only once.

18 Q. BY MR. GODOY: Now, if I can refer your attention back
19 to General Counsel Exhibit 14, am I correct that
20 Maria Sanchez was the third person from the top next to
21 Maria Raquel?

22 A. Correct.

23 Q. So she filled nine hoppers on September 11th and the
24 same number on September 12th?

25 A. She has eight.

1 Q. I'm sorry, eight and nine. Yes?

2 A. Yes.

3 JUDGE AMCHAN: Well, I can't contain myself. I'm just
4 dying to find out did MES ask you to remove any of these
5 people on the list, GC-14, after these tests?

6 THE WITNESS: No, because that's when all this started
7 and they just left it like that, because they wanted to see
8 what was going to happen.

9 Q. BY MR. GODOY: Mr. Berganza, you're sure that you spoke
10 to Maria Raquel about her performance, yes?

11 A. Yes, I did it.

12 Q. You remember this because it was an emergency that
13 happened on that same day or the same moment?

14 A. Yes.

15 Q. That emergency is something that you recall clearly in
16 your mind, yes?

17 A. That is correct.

18 Q. I'm going to show you once again what we marked as your
19 affidavit. I believe it was marked for identification as
20 General Counsel Exhibit 87.

21 MR. GODOY: Your Honor, if I could just have a moment to
22 find the --

23 JUDGE AMCHAN: Yeah.

24 Q. BY MR. GODOY: If I can direct your attention,
25 Mr. Berganza, to page 12, line -- beginning at the end of

1 line 18 of your affidavit. Am I correct that it says Manuel
2 was present?

3 A. Yes.

4 Q. It does? It says that?

5 A. Yes.

6 Q. I told her she was being removed from her work because
7 of low productivity and for using profanity at work. Am I
8 also correct, is that what it says there in the affidavit?

9 A. That was when? That was before, because when she was
10 removed for work, it was because of her attitude.

11 Q. My question to you is what it says on your affidavit.

12 A. Yes, that is correct.

13 Q. It also says I mentioned low productivity because she
14 had had low productivity. I had noticed that productivity
15 was low, but I never said anything before this meeting
16 because she was new.

17 A. Correct.

18 Q. Mr. Berganza, when did you notice that her productivity
19 was low?

20 A. After she became friends with her coworkers. And then I
21 think the coworkers, the employees, they start talking among
22 themselves and they start understanding that they could
23 start producing lower.

24 Q. What coworkers are these?

25 A. All of them.

1 Q. I see. So wouldn't it mean that all of their
2 productivity was low?

3 A. That's why we did this, because their production was
4 very bad.

5 Q. Now, other than Maria Sanchez, Aracely Ramos,
6 Reyna Sorto, Maria Elena Chavez, is there anybody on this
7 list that was fired for low productivity?

8 A. I think Yasmin Ramirez.

9 Q. Other than her, who else?

10 A. I don't remember anyone else.

11 Q. So these were the five troublemakers who were getting
12 together and planning --

13 MS. JANDRAIN: Objection.

14 JUDGE AMCHAN: Right. His testimony, those are the only
15 five on the list who were fired for low production.

16 MR. GODOY: All right, thank you, Your Honor.

17 JUDGE AMCHAN: I have one question. Before you gave
18 this test, the test started in September, did you explain to
19 the people on this list why they were having to take a test?

20 THE WITNESS: David Wyatt came to me and he told me that
21 the production was bad. He said talk to the employees. I
22 met with them. I let them know that the production was very
23 bad, that we needed to increase the production. Then after
24 all that's said, he goes that's what I heard, he goes they
25 all talk at the same time, put them, each one of them, one

1 by one, for two days on Station 37A, at the hopper. Whoever
2 wouldn't make the amount of hoppers that we require, to have
3 her removed.

4 Q. BY MR. GODOY: And you would make that decision, yes?

5 A. Then I went to talk to David Wyatt. David Wyatt spoke
6 with Tom Kusterer. And the three of us were in agreement.

7 Q. Right. But the employees, once the results came out,
8 you would decide which employees to remove. You would
9 decide, yes?

10 A. No. David Wyatt, Mark Wheeler, and myself will sit down
11 and decide who would be removed.

12 Q. Did you do this?

13 A. No.

14 Q. Looking at General Counsel Exhibit 14 again,
15 Sylvia Sandino, does she still work there?

16 A. Yes.

17 Q. What about Adriana Villavicencio, does she still work
18 there?

19 A. Yes.

20 Q. Miriam Mica, does she still work there?

21 A. Mejia. She still works there.

22 Q. Now, Mr. Berganza, when you notified Maria Raquel that
23 she was fired on October 30th, you did so in your office,
24 yes?

25 A. Correct.

1 MR. GODOY: Your Honor, he gave the affidavit on
2 December 23, 2013.

3 JUDGE AMCHAN: I didn't hear you.

4 MR. GODOY: December 23, 2013. Your Honor, I would move
5 for the admission of General Counsel Exhibit 17.

6 MS. JANDRAIN: No objection.

7 JUDGE AMCHAN: It's received.

8 (General Counsel's Exhibit 17 received in evidence.)

9 MR. GODOY: Thank you.

10 Q. BY MR. GODOY: Now, Mr. Berganza, am I correct that in
11 the 3½ years that Aracely worked for you or worked for Tito
12 Contractors, she only had one prior written warning?

13 A. I think so.

14 Q. This warning was for allegedly calling you a racist and
15 accusing you of unfair treatment?

16 A. Correct.

17 Q. Mr. Berganza, is that the written warning that you
18 issued to Aracely Ramos, on June 13, 2013?

19 A. Yes.

20 MR. GODOY: Your Honor, I would move for the
21 introduction of -- admission of General Counsel Exhibit 19
22 into the record.

23 (General Counsel's Exhibit 19 marked for identification.)

24 MS. JANDRAIN: No objection.

25 JUDGE AMCHAN: It's received.

1 (General Counsel's Exhibit 19 received in evidence.)

2 JUDGE AMCHAN: The Spanish handwriting at the bottom, is
3 that yours or Ms. Ramos'?

4 THE WITNESS: The last line is mine. Above it is mine
5 -- I mean the last one is hers. Above hers is mine.

6 Q. BY MR. GODOY: Mr. Berganza, when you issued this
7 discipline, did you notify David Wyatt that she had called
8 you this?

9 A. I don't remember doing it.

10 JUDGE AMCHAN: I know enough Spanish that it says I'm
11 not signing because, it says not, but I don't understand the
12 last two words.

13 MR. GODOY: Your Honor, I think it's a misspelling of
14 the word hablamos, which is talk. I think the translation
15 is I'm not signing because it's not what I said or not what
16 we talked about. Hablamos is spelled h-a-b-l-a-m-o-s.

17 JUDGE AMCHAN: Okay. And it should be hablamos.

18 MR. GODOY: Your Honor, I'm done with Aracely Ramos, if
19 we want to take a break?

20 JUDGE AMCHAN: Yeah, why don't we take five minutes.

21 (Off the record from 4:09 p.m. to 4:20 p.m.)

22 Q. BY MR. GODOY: Mr. Berganza, I now want to direct your
23 attention to Reyna Sorto. She was one of your employees,
24 correct?

25 A. Correct.

1 Q. She worked for the Montgomery County -- at the
2 Montgomery County Recycling Center for over 10 years,
3 correct?

4 A. She was with me around four years. I don't know if she
5 was there for 10 years.

6 Q. Am I correct that on October 30th, you notified her that
7 she was fired?

8 A. I don't remember if it was the 30th. I think it was the
9 30th.

10 JUDGE AMCHAN: I think there is evidence in the record
11 that that could be right.

12 MR. GODOY: Yeah, I believe I read it. Your Honor, can
13 I have a moment just to double-check?

14 JUDGE AMCHAN: Yeah, I mean if you look at the
15 complaint.

16 THE WITNESS: I think it was the 14th, November 14th.

17 Q. BY MR. GODOY: November 14th? You notified her on
18 November 14th that she was fired, correct?

19 A. Correct.

20 Q. And the official reason given was that she was fired for
21 poor performance; is that correct?

22 A. Bad performance and also for bothering her coworkers.

23 Q. You observed her working with only one hand, correct?

24 A. Correct.

25 Q. And what that means is she is picking materials with

1 only one hand, yes?

2 A. Correct.

3 Q. On November 1, 2013, you sent the e-mail to Davys Ramos
4 and Stedson Linkous telling them that you had observed Reyna
5 working slowly throughout the week, yes?

6 A. I remember that, yes.

7 Q. And in your e-mail, you wrote that you were going to
8 wait for Mark Wheeler to get back. Do you recall that?

9 A. Correct.

10 Q. So that, and you wrote, "we" could decide what to do.

11 A. Correct.

12 (General Counsel's Exhibit 20 marked for identification.)

13 Q. BY MR. GODOY: I'm handing you what's been marked as
14 General Counsel Exhibit 20. Mr. Berganza, is this a copy of
15 the e-mail that you sent to Davys Ramos and Stedson Linkous,
16 on November 1st?

17 A. Yes.

18 MR. GODOY: Your Honor, I would move for the admission
19 of General Counsel Exhibit 20.

20 MS. JANDRAIN: No objection.

21 JUDGE AMCHAN: Received.

22 (General Counsel's Exhibit 20 received in evidence.)

23 Q. BY MR. GODOY: Where was Mark Wheeler when you sent this
24 e-mail?

25 A. Vacation.

1 Q. So it wasn't because this was sent on a Friday?

2 A. Perhaps he left for that week, but maybe he was coming
3 back on that Monday or Tuesday of the following week.

4 Q. Now, did Davys Ramos respond to this e-mail?

5 A. I don't remember.

6 Q. Did you look?

7 A. Yes, but I don't remember receiving anything.

8 Q. But in the last -- we issued a subpoena and we have not
9 received a response. I'm asking you if you searched your
10 e-mail for an e-mail that would be responsive to this one.

11 A. No.

12 Q. You didn't search or you didn't find it?

13 A. I didn't look for a response for this e-mail, and I
14 didn't find it in my e-mail. I still have my e-mail with me
15 and I didn't find it.

16 Q. Now, Mr. Berganza, am I correct that after you sent this
17 e-mail, you called Reyna into your office?

18 A. Correct.

19 Q. You asked her why she was working slow, yes?

20 A. Correct.

21 Q. She told you she was suffering from pain in her left
22 arm, correct?

23 A. Correct.

24 Q. And you told her she had to go to the doctor.

25 A. Correct.

1 MR. GODOY: I'm sorry. I may have interrupted, but the
2 question before was yes?

3 THE INTERPRETER: He said yes.

4 Q. BY MR. GODOY: You told her she had two weeks to go to
5 the doctor, correct?

6 A. No. I told her to go to the doctor as soon as she can.

7 Q. But in your affidavit that you gave to the National
8 Labor Relations Board, you gave her -- you said that you
9 gave her two weeks, didn't you?

10 A. That was the second time that I talked to her and she
11 told me the same thing, that the hand was hurting.

12 Q. So the second time you spoke to her -- well, let's start
13 from there. When was the first time you spoke to her?

14 A. I don't remember.

15 Q. Did it occur in November?

16 A. I think it was in November or before November.

17 Q. What about the second time?

18 A. That was after. I think it was November, but I don't
19 remember the exact date, but it was November.

20 Q. When you gave your affidavit to the National Labor
21 Relations Board, you seem to remember and thought it was
22 November 1st, didn't you?

23 A. Possibly.

24 Q. Do you need me to show you a copy of your affidavit?

25 A. Please.

1 Q. Mr. Berganza, I'm directing your attention to page 11,
2 line 1, beginning with line 1. And then if you look down to
3 line 5, you said that I met with her on November 1, 2013.

4 Correct?

5 A. Correct.

6 Q. You also said we met in the office, the maintenance
7 office.

8 A. Correct.

9 Q. And we met alone.

10 THE INTERPRETER: I'm sorry?

11 Q. BY MR. GODOY: We met alone.

12 A. Correct.

13 MS. SILAS: Pablo, do you need this?

14 MR. GODOY: Yeah. Your Honor, if I could just have one
15 minute?

16 JUDGE AMCHAN: Yeah.

17 Q. BY MR. GODOY: Mr. Berganza, line 8 of your affidavit
18 says I gave her two weeks to go to the doctor. Correct?

19 A. Correct.

20 Q. Thank you. After you spoke to Reyna in your office --
21 well, actually, before I ask that question, when you gave
22 her two weeks on November 1st, is that your first or second
23 meeting with her?

24 A. I think it was the second meeting with her.

25 Q. So she had until November 14th to bring you a doctor's

1 note, correct?

2 A. I think so.

3 Q. So after you spoke to Reyna in your office, you send
4 Davys an e-mail where you described the conversation that
5 you had with her, correct?

6 A. Correct.

7 (General Counsel's Exhibit 21 marked for identification.)

8 Q. BY MR. GODOY: Mr. Berganza, I've handed you what's been
9 marked for identification as General Counsel Exhibit 21. Am
10 I correct that this is a copy of an e-mail that you sent to
11 Davys Ramos on November 1st, where you describe what you
12 discussed with Reyna Sorto?

13 A. Correct.

14 MR. GODOY: Your Honor, I would move for the admission
15 of General Counsel Exhibit 21.

16 MS. JANDRAIN: No objection.

17 JUDGE AMCHAN: It's received.

18 (General Counsel's Exhibit 21 received in evidence.)

19 Q. BY MR. GODOY: Now, Mr. Berganza, isn't it true that
20 Ms. Sorto, Reyna Sorto gave you a doctor's report on or
21 about November 8th?

22 A. She gave me a report. I don't remember the exact date.

23 Q. You faxed the report, correct?

24 A. Correct.

25 JUDGE AMCHAN: He faxed the report to whom?

1 Q. BY MR. GODOY: Who did you fax it to?

2 A. Julisa.

3 Q. You didn't send it to Davys Ramos?

4 A. No, because Julisa is in charge of medical problems and
5 medical issues.

6 Q. Always?

7 A. Yes.

8 (General Counsel's Exhibit 22 marked for identification.)

9 Q. BY MR. GODOY: I've handed you what's been marked for
10 identification as General Counsel Exhibit 22. Mr. Berganza,
11 is this a fax that you sent on November 8th where you
12 transmitted the report that was given to you by Reyna Sorto?

13 A. Yes.

14 MR. GODOY: Your Honor, I would move for the admission
15 of General Counsel Exhibit 22 into the record.

16 MS. JANDRAIN: No objection.

17 JUDGE AMCHAN: It's received.

18 (General Counsel's Exhibit 22 received in evidence.)

19 Q. BY MR. GODOY: Now, Mr. Berganza, this report, which has
20 also been marked, and I can show it to you in larger --
21 previously marked and admitted as General Counsel
22 Exhibit 49. This wasn't enough for you, right?

23 THE INTERPRETER: I'm sorry?

24 Q. BY MR. GODOY: This was not enough for you?

25 A. With what?

1 Q. The report.

2 A. What report? The medical report?

3 Q. Right. The report that's marked General Counsel

4 Exhibit 22 and also 49. They're the same document. And,

5 Mr. Berganza, just so we're clear, General Counsel

6 Exhibit 22 is just a copy of a fax. And General Counsel

7 Exhibit 49 is what the attachment to the fax was, just in

8 larger print.

9 A. Okay.

10 Q. So am I correct that this report that Reyna Sorto gave

11 you wasn't enough?

12 A. That is correct.

13 Q. Am I correct that Reyna Sorto had surgery on her left

14 hand?

15 A. That is correct.

16 Q. You knew this because she had missed several weeks of

17 work, correct?

18 A. No, because I made the report, the injury that she had,

19 and I knew when she was going to have the surgery and the

20 time that she was going to be out of work.

21 Q. So she was out -- you agree then that she was out from

22 January 22, 2012, until April 11, 2012, due to the surgery?

23 A. Correct.

24 Q. You also know this because she filed a workers'

25 compensation claim, correct?

1 A. Correct.

2 Q. You know that she had 25 -- she was determined to have
3 25 percent disability of her left hand, correct?

4 A. Correct.

5 Q. So you weren't surprised when she said her hand or arm
6 hurt, correct?

7 A. Correct.

8 (General Counsel's Exhibit 23(a) and 23(b) marked for
9 identification.)

10 Q. BY MR. GODOY: Mr. Berganza, I've handed you what's been
11 marked for identification as General Counsel Exhibit 23(a)
12 and 23(b). Do you know if this is a workers' compensation
13 award that was given to Ms. Sorto?

14 A. It is the first time that I'm seeing this.

15 Q. So this was never sent to you?

16 A. No.

17 MR. GODOY: Can we get a stipulation to the admission of
18 this document?

19 MS. JANDRAIN: 23(b) is already in, right?

20 MR. GODOY: Yeah, I suppose it is.

21 JUDGE AMCHAN: Yeah, 23(b) is in the record.

22 MR. GODOY: So just 23(a) then? These documents were
23 given to us pursuant to the --

24 MS. JANDRAIN: I'm just reading them. I mean I have no
25 challenge to their authenticity. That's fine.

1 JUDGE AMCHAN: All right, it's received.

2 (General Counsel's Exhibit 23(a) and 23(b) received in
3 evidence.)

4 MR. GODOY: Thank you.

5 Q. BY MR. GODOY: Mr. Berganza, on November 8th, you then,
6 after you received this report which is marked as General
7 Counsel Exhibit 22 and also 49, you went and you spoke to
8 Mark Wheeler, correct?

9 A. Correct.

10 Q. And you informed him of Reyna's performance, correct?

11 A. Correct.

12 Q. And Mark Wheeler, as a result of what you told him,
13 agreed to watch her, correct?

14 A. Correct.

15 Q. And a few days later, Mark Wheeler came back to you and
16 said that when she wasn't being watched, she was working
17 slow; is that right?

18 A. After a few days, he was watching her. And then he came
19 to me and he told me that when she thought nobody was
20 looking at her, she was working slower. When she noticed
21 somebody was looking at her, she started working faster.

22 Q. When did he tell you this?

23 A. I think it was two or three days after I talked to him.
24 (General Counsel's Exhibit 24 marked for identification.)

25 Q. BY MR. GODOY: I'm going to show you -- I'm going to

1 hand you what's been marked for identification as General
2 Counsel Exhibit 24. Mr. Berganza, am I correct this is an
3 e-mail that you sent on November 13th to Davys Ramos?

4 A. Correct.

5 Q. This e-mail relates to a conversation you had with
6 Mr. Wheeler about Ms. Sorto, correct?

7 A. Correct.

8 Q. In the e-mail, you mention a David. Am I correct that
9 that is David Wyatt?

10 A. Correct.

11 Q. You also say that this was the second time Mark Wheeler
12 told you about Ms. Reyna Sorto. I'm sorry, Mark asked you,
13 yes.

14 A. The answer is yes.

15 Q. When was the first time?

16 A. It was during the course of the same week.

17 Q. So you spoke to Mark twice during the week after you
18 told him about Reyna Sorto's performance?

19 A. Correct.

20 MR. GODOY: Your Honor, I would move for the
21 introduction of General Counsel Exhibit 24.

22 MS. JANDRAIN: No objection.

23 JUDGE AMCHAN: It's received.

24 (General Counsel's Exhibit 24 received in evidence.)

25 Q. BY MR. GODOY: Mr. Berganza, between the time that you

1 spoke to Reyna Sorto -- I'm sorry, after you spoke to
2 Reyna Sorto and after you spoke to Mark Wheeler the first
3 time, did you talk to Reyna Sorto about her performance?

4 A. No.

5 Q. So between November 1 until November 14th, you never
6 spoke to her again about her performance?

7 A. I don't remember.

8 Q. But you were still awaiting her doctor's note, correct?

9 A. Correct.

10 Q. Am I correct that following the e-mail you sent that's
11 marked General Counsel Exhibit 24, Mark Wheeler informed you
12 that David wanted -- David Wyatt wanted Reyna Sorto removed?

13 A. They both were in agreement.

14 Q. So they both told you they wanted her removed?

15 A. Correct.

16 Q. At any point during your conversation --

17 A. I would like to correct something. Both of them didn't
18 tell me. Mark spoke with David and Mark came to me.

19 Q. Okay. So Mark spoke with David and David -- I'm sorry,
20 can you repeat that?

21 A. Mark spoke with David, and then David came to me. He
22 told me I spoke with -- Mark spoke with David, and Mark came
23 back to me. He told me I spoke with David and she has to
24 go.

25 Q. At any point during your conversation with Mark, after

1 he returned from the vacation or his day off, when you sent
2 the e-mail to Davys Ramos which is marked as General Counsel
3 Exhibit 21, on November 1st, did you notify David Wyatt and
4 Mark Wheeler that Reyna Sorto had an injury to her left
5 hand?

6 A. They knew it all the time.

7 Q. So did you show them the report that you faxed that's
8 marked as General Counsel Exhibit 22 and 49?

9 A. I'm not sure, but I believe I gave them a copy.

10 Q. When did you give them a copy?

11 A. I'm not sure. I think I gave it the same day that she
12 gave it to me.

13 Q. Was this when you spoke to Mark that you gave David a
14 copy?

15 A. Copies of what, the document that Reyna gave to me?

16 Q. The report here marked as General Counsel Exhibit 49 and
17 General Counsel Exhibit 22.

18 A. I don't remember giving this to them. I don't remember
19 them knowing about this. But I do remember them knowing
20 that she had the injury.

21 Q. On November 14, 2013, you notified Reyna that she was
22 fired, correct?

23 A. Correct.

24 MR. GREENBAUM: Your Honor, can we go off the record for
25 just --

1 JUDGE AMCHAN: Yes.

2 (Off the record at 4:46 p.m.)

3 Q. BY MR. GODOY: On November 14th, you notified

4 Reyna Sorto that she was fired, correct?

5 A. Correct.

6 Q. You did this in the afternoon, yes?

7 A. Correct.

8 Q. And you gave her a copy of a memo that you wrote which
9 explained why she was fired, yes?

10 A. Correct.

11 (General Counsel's Exhibit 25 marked for identification.)

12 Q. BY MR. GODOY: Mr. Berganza, I've just handed you what's
13 been marked as General Counsel Exhibit 25. Am I correct
14 this is a fax you sent to Davys Ramos with a memo, a letter
15 describing the reason why you fired Reyna Sorto?

16 A. Correct.

17 MR. GODOY: Just for the record, Your Honor, this
18 document 25 is the same as 50 that was previously admitted.

19 MS. JANDRAIN: But without the cover sheet, right?

20 MR. GODOY: Without the cover sheet, yes. And, Your
21 Honor, I would move for the admission of General Counsel
22 Exhibit 25 into the record.

23 MS. JANDRAIN: No objection.

24 JUDGE AMCHAN: It's received.

25 (General Counsel's Exhibit 25 received in evidence.)

1 Q. BY MR. GODOY: Now, your memo, in the memorandum which
2 is the second page of General Counsel Exhibit 25, and I'm
3 going to hand you General Counsel Exhibit 50, it says that
4 Reyna Sorto is not achieving the goal qual of the production
5 requested by MES. And by that you mean that she wasn't
6 meeting the production goals set by MES?

7 A. Correct.

8 Q. What are the production goals of MES?

9 A. The goal is that they would like to see what they call
10 bales to be 18 to 20 a day and the production has decreased.

11 Q. Bales or pacas, what are those?

12 A. In Spanish it's bales -- in English, it's bales, but in
13 Spanish we call it pacas.

14 Q. Are bales smaller or larger than hoppers?

15 A. They are smaller than the hoppers, but they're heavier
16 than they are.

17 Q. Do you monitor how many bales employees fill?

18 A. When they were working on 37A, yes, because nine hoppers
19 make one bale.

20 Q. So nine hoppers equal one bale?

21 A. Something like that.

22 Q. So the majority of employees fill about one hopper, more
23 or less, a day, correct?

24 A. One a day.

25 Q. One bale, yes. And there are a few that we identified

1 in General Counsel Exhibit 14 that fill hoppers; is that
2 correct?

3 JUDGE AMCHAN: Well, other than the test in General
4 Counsel 14, do you have any way of monitoring the daily
5 production of any individual employee?

6 THE WITNESS: No, you can only see it by the movement
7 and the way people work.

8 Q. BY MR. GODOY: Your e-mail also says that Reyna was
9 bothering employees and telling employees not to work so
10 hard; is that right?

11 A. That is correct.

12 Q. By e-mail, I'm referring to what's marked as General
13 Counsel Exhibit 25 and 50. I apologize. It's not an
14 e-mail; it's the memo you wrote to Davys.

15 A. Correct.

16 Q. So you wrote there that she -- am I correct that you're
17 not disputing that?

18 A. That is correct.

19 Q. This wasn't mentioned in your other e-mails to
20 Davys Ramos, correct?

21 A. No, it was not mentioned.

22 Q. Am I correct that this was reported by an employee?

23 A. I heard that from many employees, but I was not paying
24 attention.

25 Q. When was this?

1 A. I cannot remember.

2 Q. In your affidavit, you said it was Alba Rauda.

3 A. Alba Rauda. It was Alba Rauda and it was a lady, she
4 doesn't involved in anything, and she came to me, asking me
5 to move her from that station because she was tired of
6 hearing Reyna Sorto say not to work too hard because they
7 don't appreciate anything here.

8 Q. What do you mean by she doesn't get involved in
9 anything?

10 A. Because she never complained. She doesn't complain
11 about anything. She is only dedicated to do her work.

12 Q. She's a good worker.

13 A. Yes.

14 Q. You reported this to Mark, what Alba Rauda had said to
15 you, correct?

16 A. Correct.

17 Q. You did this on November 8th?

18 A. I don't remember the date that I did it.

19 Q. Your affidavit says November 8th. Do you want me to
20 show it to you?

21 A. If I said it, then it was like that, because when I gave
22 that declaration, that statement, that was closer to when it
23 happened. Now it has been a long time.

24 Q. Am I correct that you never spoke to Reyna Sorto about
25 what Alba or the other employees were saying about her?

1 A. I didn't tell her who told me, who were the employees
2 who were telling me what she was saying, because if I tell
3 her who said it, then they're going to get in trouble within
4 each other.

5 Q. Mr. Berganza, I didn't ask you who, that you asked her
6 who told her. I'm asking if you asked her about the
7 allegations.

8 A. I don't remember doing it. I think I did.

9 Q. Did you document it on your computer?

10 A. No.

11 Q. Did you take any notes of it?

12 A. No.

13 Q. Was there any sort of emergency on November 8th?

14 A. I don't remember.

15 Q. You would remember an emergency, right?

16 A. Possible, yes.

17 Q. Am I correct that prior to this incident, the only
18 discipline that Reyna Sorto had was a warning from May 25,
19 2011, for not wearing safety goggles in the plant?

20 A. That is correct.

21 (General Counsel's Exhibit 26 marked for identification.)

22 Q. BY MR. GODOY: Mr. Berganza, I'm handing you what's been
23 marked for identification as General Counsel Exhibit 26. Am
24 I correct this is a warning that you issued to Reyna Sorto
25 on May 25, 2011?

1 A. That is correct.

2 MR. GODOY: Your Honor, I would move for the admission
3 of General Counsel Exhibit 26 into the record.

4 MS. JANDRAIN: No objection.

5 JUDGE AMCHAN: It's received.

6 (General Counsel's Exhibit 26 received in evidence.)

7 MR. GODOY: Thank you, Your Honor. I have two more
8 employees to go through. I just wonder what you'd prefer.
9 Would you like me to proceed or --

10 JUDGE AMCHAN: What's your preference?

11 MS. JANDRAIN: I think our preference is to try and
12 finish the witness today, if we can.

13 JUDGE AMCHAN: All right.

14 Q. BY MR. GODOY: Mr. Berganza, I now want to direct your
15 attention to Yasmin Ramirez. She is another one of the
16 employees that used to work for you, correct?

17 A. Correct.

18 Q. Am I correct that she worked at the Montgomery County
19 Recycling facility since 2007?

20 A. Correct.

21 Q. She was fired on December 6, 2013, correct?

22 A. I think so.

23 Q. She worked as a sorter, correct?

24 A. Correct.

25 Q. You were the one who notified her of her termination,

1 yes?

2 A. Correct.

3 Q. And you did this in your office?

4 A. Yes.

5 Q. Okay. Now, am I correct that according to you, in
6 October of 2013, Martha Serpas reported to you that Yasmin
7 was teasing her?

8 A. That is correct.

9 Q. Martha Serpas is an employee of Tito Contractors?

10 A. Correct.

11 Q. She is also one of the employees that you solicited a
12 union card from, correct?

13 A. Correct.

14 Q. She reported to you that Yasmin had called her an old
15 lady, correct?

16 A. Old lady and stupid.

17 Q. And while Martha was in your office, Mark Wheeler
18 happened to walk by; is that right?

19 THE INTERPRETER: He went?

20 Q. BY MR. GODOY: While Martha was in your office --

21 A. That is correct.

22 Q. Did you call Mark Wheeler?

23 A. No.

24 Q. It was just coincidence he walked by. And he decided to
25 sit in on the conversation between you and Martha, correct?

1 A. I was standing with her at the door, in the office that
2 I go through. Mark entered through the other door that's
3 next to my door. He noticed that Martha was crying, telling
4 me what was happening.

5 Q. And he decided to stay and listen?

6 A. He asked me what was going on. I explained to him what
7 was going on. And then he told me let's sit down and
8 explain to me the course.

9 Q. Am I correct that Mark Wheeler doesn't speak Spanish?

10 A. That is correct.

11 Q. So you were serving as a translator, correct?

12 A. Correct.

13 Q. As a result of the conversation between you, Martha, and
14 Mark Wheeler, am I correct that Mark decided to observe
15 Reyna?

16 JUDGE AMCHAN: You're talking about Reyna or Yasmin?

17 MR. GODOY: Yasmin.

18 Q. BY MR. GODOY: Yasmin.

19 A. I don't know if he started watching Yasmin after that
20 happened. I don't know what happened after we had that
21 conversation.

22 Q. Your affidavit says that it was Mark decided to watch
23 her after the meeting. Would you like me to show it to you?

24 A. Perhaps he told me at that moment I am going to watch
25 her.

1 Q. After the meeting with Mark Wheeler and Martha Serpas,
2 did you talk to Yasmin about her behavior?

3 A. I don't remember doing it.

4 Q. The purpose of Mark's observation of Yasmin was to see
5 if she was scooping material, correct?

6 A. She had the habit that whenever she was angry at her
7 coworkers or at me, she would mix the material.

8 Q. And mixing materials is what?

9 A. She would put garbage and she would put material that
10 she was not supposed to put in an area where she was
11 supposed to put a specific material.

12 Q. Now, am I correct that on October 10, 2013, Mark Wheeler
13 notified you that he had seen Yasmin scooping materials.

14 A. Possibly, yes.

15 Q. And on November 27, 2013, you sent a memo to
16 Alex Pierola, Maximo Pierola, and Davys Ramos describing
17 what Martha Serpas' complaints were against Yasmin, correct?

18 A. I think so.

19 Q. Mr. Berganza, this, am I correct, is a letter that you
20 sent or transmitted on November 27, 2013, regarding the
21 incident involving Martha Serpas and Yasmin Ramirez?

22 A. Correct.

23 MR. GODOY: Your Honor, I would move for the
24 introduction of General Counsel's exhibit -- the admission
25 of General Counsel Exhibit 27.

1 (General Counsel's Exhibit 27 marked for identification.)

2 MS. JANDRAIN: No objection.

3 JUDGE AMCHAN: It's received.

4 (General Counsel's Exhibit 27 received in evidence.)

5 Q. BY MR. GODOY: Mr. Berganza, how did you send this memo,
6 letter to Alex, Tito, or Davys?

7 A. I think through fax.

8 Q. And did they respond?

9 A. I don't remember.

10 Q. Now, General Counsel Exhibit 27 has a lot of
11 allegations. It says that Yasmin has no respect to
12 coworkers, that she uses bad words, she called Martha a
13 stupid old lady, and that Yasmin thought Mark was a racist,
14 and that she made fun of Martha for not being able to fill
15 10 hoppers.

16 A. Correct.

17 Q. Are all of these complaints the ones that she raised in
18 October?

19 A. Yes.

20 Q. On December 2nd, you wrote and sent another memo to
21 Maximo, Alex, and Davys, telling them that Mark told you to
22 remove Yasmin, correct?

23 A. I think so.

24 (General Counsel's Exhibit 28 marked for identification.)

25 Q. BY MR. GODOY: Mr. Berganza, am I correct that -- what

1 I've just handed you has been marked for identification as
2 General Counsel Exhibit 28. Am I correct this is a memo or
3 letter that you sent to Tito, Alex, and Davys informing them
4 that David and Mark Wheeler wanted Yasmin Ramirez removed?

5 A. Correct.

6 MR. GODOY: Your Honor, I would move for the admission
7 of General Counsel Exhibit 28 into the record.

8 MS. JANDRAIN: No objection.

9 JUDGE AMCHAN: It's received.

10 (General Counsel's Exhibit 28 received in evidence.)

11 Q. BY MR. GODOY: Did you fax it, e-mail it, how did you
12 send this?

13 A. I think through fax.

14 Q. Did you get a response?

15 A. I don't remember.

16 Q. So how did you know that you had to fire her?

17 A. Because when Mark Wheeler came to me, he told me that
18 she has to be removed before next week. And after I sent
19 this statement to Davys, I let him know over the phone,
20 Davys Ramos.

21 Q. What did Davys Ramos say?

22 A. It was a surprise.

23 Q. Why?

24 A. I don't know.

25 Q. Surprised that Yasmin was asked to be removed?

1 A. I think.

2 Q. And then she told you to fire her?

3 A. No. I even talked to her and I asked if we could make a
4 transfer. And then she called me the next day and she told
5 me that she had spoken with Alex, and he said that we cannot
6 do a transfer.

7 Q. A transfer where?

8 A. To Cockeysville, to another recycle plant.

9 Q. You've never been to the Cockeysville plant, have you?

10 A. No, but I heard about it.

11 Q. Do you know where Yasmin Ramirez lives?

12 A. Yes.

13 Q. Where does she live?

14 A. In Glenmont Forest Apartments.

15 Q. How do you know that?

16 A. Because I live there.

17 Q. How far is Cockeysville from Glenmont Forest Apartments?

18 A. I'm not sure, maybe 30, 40 minutes.

19 Q. By car or public transportation?

20 A. Oh, the Company provides transportation.

21 Q. To all employees?

22 A. All the employees.

23 Q. Do all of those employees live near you?

24 A. I don't know.

25 Q. So you asked for a transfer, but you didn't know how she

1 would get there, correct?

2 A. I was sure that she was going to be transported in the
3 company vehicle.

4 Q. Why would you be so sure?

5 JUDGE AMCHAN: I don't know why you're following up
6 this. I mean he suggested a transfer, and people higher up
7 said no.

8 MR. GODOY: All right.

9 Q. BY MR. GODOY: Now, am I correct that on December 6th,
10 that's when you fired Yasmin?

11 A. I would like to correct something. I did not fire
12 anyone.

13 Q. What did you do then?

14 A. Only inform them that they didn't have a job anymore,
15 but it did not come from me.

16 Q. Okay. So you notified her that she was terminated,
17 correct?

18 A. Correct.

19 Q. And you did so in your office?

20 A. Correct.

21 Q. After you told her she was fired, you gave her a
22 termination letter, correct?

23 A. Correct.

24 (General Counsel's Exhibit 61 marked for identification.)

25 Q. BY MR. GODOY: Mr. Berganza, I've handed you what's been

1 marked for identification as General Counsel Exhibit 61. Am

2 I correct that this is the termination letter you gave her?

3 A. That is correct.

4 MR. GODOY: Your Honor, I would move for the admission

5 of General Counsel Exhibit 61.

6 MS. JANDRAIN: No objection.

7 JUDGE AMCHAN: It's received.

8 (General Counsel's Exhibit 61 received in evidence.)

9 Q. BY MR. GODOY: Now, Mr. Berganza, before Yasmin Ramirez
10 had been fired, she had a very limited disciplinary history,
11 correct?

12 A. I don't remember disciplining her myself.

13 Q. Let me show you what's been marked as General Counsel
14 Exhibit 29.

15 (General Counsel's Exhibit 29 marked for identification.)

16 JUDGE AMCHAN: Had Yasmin Ramirez worked there the
17 entire four years that you had been the supervisor at Shady
18 Grove?

19 THE WITNESS: I've been there for four years. I don't
20 know how long she has been there, after she left. But when
21 I got there, she was there.

22 Q. BY MR. GODOY: Mr. Berganza, is this a discipline that
23 you issued to Mrs. Yasmin Ramirez?

24 A. Yes.

25 MR. GODOY: Your Honor, I would move the introduction of

1 General Counsel's Exhibit 29.

2 MS. JANDRAIN: No objection.

3 JUDGE AMCHAN: It's received.

4 (General Counsel's Exhibit 29 received in evidence.)

5 Q. BY MR. GODOY: Mr. Berganza, can you recall any other
6 disciplines that were issued to Mrs. Ramirez?

7 A. I do not remember.

8 Q. Mr. Berganza, I now want to ask you a little bit about
9 something that occurred in December.

10 MR. GODOY: Your Honor, if I could just have a moment?

11 JUDGE AMCHAN: Yeah. I just have a problem while I was
12 looking through my notes. There was a hearing on December
13 the 2nd.

14 MR. GODOY: Right.

15 JUDGE AMCHAN: On the --

16 MR. GODOY: R case hearing.

17 JUDGE AMCHAN: -- appropriate unit.

18 MR. GODOY: That's right, Your Honor.

19 JUDGE AMCHAN: When was the representation petition
20 filed?

21 MS. SILAS: November 15, 2013.

22 MR. GODOY: Your Honor, could we go off the record for a
23 minute?

24 JUDGE AMCHAN: Yeah, off the record.

25 (Off the record from 5:16 p.m. to 5:17 p.m.)

1 JUDGE AMCHAN: Back on the record.

2 Q. BY MR. GODOY: Now, Mr. Berganza, am I correct that on
3 December 18, 2013, you called employees of Tito Contractors
4 into your office?

5 A. I think so.

6 Q. And you were calling them one by one, correct?

7 A. Correct.

8 Q. This was throughout the day?

9 A. Yes, it was throughout the day.

10 Q. Am I correct that you were notifying the MES line
11 leaders to call them or tell them to go up to your office?

12 A. Correct.

13 Q. Now, Mr. Berganza, I next want to ask you about
14 Maria Elena Chavez. She was another one of your employees
15 at the Montgomery County Recycling Center, correct?

16 A. Correct.

17 Q. Am I correct that she worked for Tito Contractors for
18 over 10 years?

19 A. I'm not sure for how long, but she did work for Tito
20 Contractors.

21 Q. You agree that she was there for longer than you,
22 correct?

23 A. Correct.

24 Q. She worked as a sorter; is that correct?

25 A. Correct.

1 Q. And you notified her of her termination on December 13,
2 2013?

3 A. Correct.

4 Q. You fired her, didn't you?

5 A. That was a decision made between my supervisors in the
6 office and myself.

7 Q. What supervisors?

8 A. Davys Ramos, Alex, and Kenny Brown.

9 Q. Am I correct that when you notified Maria Elena of her
10 termination, Alex Pierola was with you?

11 A. Correct.

12 Q. You notified her in the offices of the MES division,
13 correct?

14 A. On the upper level, yes.

15 Q. These are offices that are used by David Wyatt and
16 Mark Wheeler?

17 A. There is a conference room.

18 Q. I see. The recommendation to terminate Maria Elena was
19 made by you, correct?

20 A. Correct.

21 Q. Am I correct that Maria Elena had gotten into an
22 argument with MES employee Juana Rosales on December 10,
23 2013?

24 A. Correct.

25 Q. This is the same Juana Rosales that was involved with

1 the other employees that were terminated, correct?

2 A. Correct.

3 Q. Am I correct that an argument occurred between

4 Maria Elena and Juana Rosales after water was spilled on

5 Maria Elena?

6 A. Correct.

7 Q. And Elena was working in Line 37A, correct?

8 A. With the lids.

9 Q. And above her was the light sort station?

10 A. Correct.

11 Q. And that day it had been raining or snowing, correct?

12 A. I don't remember right then. It had snowed the day
13 before.

14 Q. So the garbage and materials were wet, yes?

15 A. Correct.

16 Q. In that case, sometimes water gets on the floor,
17 correct?

18 A. Correct.

19 Q. And employees have been instructed to carefully sweep
20 the water down onto the second level; is that right?

21 A. Correct.

22 Q. Are they sweeping the water or are they filling buckets?

23 A. Usually, it is not too much water that's on the floor.

24 When there is a lot of water, they pick it up with a

25 dustpan. When it's just a little bit, they just sweep it

1 down.

2 Q. This is not clean water, yes?

3 A. No.

4 Q. This is dirty, contaminated water.

5 A. Correct.

6 Q. So the fact that water was spilled on Ms. Chavez, that
7 that got her upset is not surprising, is it?

8 A. No.

9 Q. This occurred towards the end of the shift, correct?

10 A. Correct.

11 Q. And what time does the shift start?

12 A. Six in the morning.

13 Q. And what time does it end?

14 A. 4:30.

15 Q. There are breaks in between?

16 A. Yes, they have breaks at 2:30 p.m., 12 noon, and 9 a.m.

17 Q. The 9 a.m. break is how long?

18 A. Twenty minutes.

19 Q. The noon break is how long?

20 A. Thirty-five minutes.

21 Q. And the 2:30 break?

22 A. Twenty minutes.

23 Q. At the end of the shift, am I correct that Juana Rosales
24 went up -- or went down to your office and notified you that
25 water had been spilled on Maria Elena?

1 A. No.

2 Q. What happened?

3 A. I didn't know anything. There is the maintenance office
4 where all the employees at the end of the shift, they put
5 all the things away and I was arriving to the office.

6 Mostly, all the employees were inside the office. When I
7 was arriving, Juana and Maria Chavez were arguing. That's
8 when I found out what was going on.

9 Q. So your testimony is that you were not in your office
10 when they were there?

11 A. I was not in the office when they were arguing.

12 Q. So you walked into the office as they were arguing?

13 A. They were at the door going into the office.

14 Q. They were arguing amongst themselves?

15 A. Correct.

16 Q. Am I correct that employees take the same breaks and
17 leave at the same time, everybody? So if there is a
18 9 o'clock break, everybody takes a break?

19 A. At 9 o'clock, all of them. At 12, only those that work
20 on the line and those that are operating the machines.

21 Q. What about when the shift ends at 4:45?

22 A. Everybody leaves at the same time.

23 Q. All employees have to go into your office to turn in
24 their helmets and their goggles, correct?

25 A. Yes. They enter. They go in to leave the helmets, the

1 goggles, and to clock out.

2 Q. The employees clock out with a timecard?

3 A. Yes, correct.

4 Q. And do you?

5 A. As well.

6 Q. Do you also leave at 4:45?

7 A. No, 4:35.

8 Q. So you leave before them?

9 A. They leave at 4:30.

10 Q. So now I'm confused. You said that the shift ends at

11 4:45?

12 A. I did not say 4:45. I said 4:30.

13 Q. I'm sorry, 4:30. So you leave at 4:35?

14 A. Correct.

15 Q. And they leave at what time?

16 A. 4:30.

17 Q. So they don't actually leave at 4:30. That's when they

18 stop working, correct?

19 A. They stop working at 4:25, 4:23.

20 Q. So you walk into the office and you see Maria Elena

21 arguing with Juana. What are they arguing about?

22 A. They were arguing about the fact that water was spilled

23 on Maria Chavez, and they were both very angry. But because

24 it was time for everybody to leave and everybody wanted to

25 go to their houses, they were at the door and they were

1 stopping them from leaving. Then I told both of them calm
2 down and tomorrow we're going to speak about the problem,
3 because it's time to leave.

4 Q. And then you left?

5 A. Then I went to the office to change my equipment.

6 Q. And then you left?

7 A. Then I left.

8 Q. Did you leave before or after them?

9 A. After they left.

10 Q. So where did they go after you dropped off your helmet,
11 your goggles and helmet?

12 A. I suppose they go to the locker to change clothes.

13 Q. So you didn't witness anything that took place that was
14 inappropriate between Juana and Maria Elena, did you?

15 A. Only what I've heard when they were arguing in the
16 office that one was saying you did it, the other one would
17 say, yes, I did it.

18 Q. So your testimony is they didn't -- they weren't arguing
19 about who did it, just about why it happened?

20 A. They were arguing about who did it, because Maria Chavez
21 was blaming Iris Salmeron?

22 Q. Who is Iris Salmeron?

23 A. An employee from Tito Contractors.

24 Q. So you leave, and two days later Elena is fired. Why
25 was she fired?

1 A. Because they continued to argue in the bathroom. They
2 argued really bad. And that was the information we gathered
3 from five or six witnesses that were there.

4 Q. So when did you find out about this?

5 JUDGE AMCHAN: I'm getting a little confused on the
6 dates. She was fired on December 13th. Which day was it
7 that Maria Elena Chavez got the water dumped on her?

8 THE WITNESS: I'm not sure if it was on the 10th or
9 the 11th.

10 Q. BY MR. GODOY: In your affidavit, you said it was
11 December 10th, Mr. Berganza. Is there any reason to believe
12 otherwise?

13 A. No, then it was December 10th. That's what I said, I'm
14 not sure if it was the 10th or the 11th.

15 Q. So did anything happen on the 11th, the following day?

16 A. That's when Juana or the people that were gathered when
17 all this incident took place, they started rumors, and
18 that's when Mark Wheeler wanted to speak with each one of
19 them in the office.

20 Q. How did you find out about those rumors?

21 A. Because they were all talking about it. And then Mark
22 called Juana and asked who were there.

23 Q. Were you present for that conversation?

24 A. Yes.

25 Q. Were you present for the conversations between Mark and

1 any other employees?

2 A. Yes.

3 Q. Who were those employees?

4 A. I don't remember well, but I think it was Iris Salmeron,
5 Alba Rauda, Martha Serpas, I believe. I don't remember who
6 else, but there were like five or six.

7 Q. In your affidavit, I believe you said Juana,
8 Martha Serpas, and Alba Rauda. What makes you think there
9 were more people?

10 A. Because I'm sure there were other people.

11 Q. Did you take notes?

12 A. I think I do have notes about that.

13 Q. You have notes. And when did you make them?

14 A. I think the same date, in the afternoon, or the next
15 day. I believe I have it in my computer.

16 MR. GODOY: Your Honor, we would ask for those notes.

17 We have not received them. They were requested pursuant to
18 subpoena.

19 JUDGE AMCHAN: If he has them, he should turn them over.

20 MS. JANDRAIN: That's fine.

21 Q. BY MR. GODOY: And those notes encompass every employee
22 you spoke to; is that right?

23 THE INTERPRETER: I'm sorry?

24 Q. BY MR. GODOY: Those notes describe every employee that
25 you spoke to that day?

1 A. Yes.

2 Q. And you just met with Elena that day?

3 A. Yes, we went with her on that same day.

4 Q. What was your purpose for being with her?

5 A. Know what happened in the bathroom.

6 Q. Were you also serving as an interpreter?

7 A. Correct.

8 Q. So am I correct that, according to you, Maria Elena had
9 gotten aggressive with Juana?

10 A. Yes.

11 Q. And by aggressive, you mean that some of the employees
12 thought she might get aggressive physically?

13 A. I remember that one of the employees or two of them said
14 that they thought that Maria was going to hit Juana.

15 Q. Who were those employees?

16 A. I don't remember exactly, but I believe it was Martha or
17 Iris.

18 Q. Those details would be in your notes, correct?

19 A. Correct.

20 Q. With respect to the decision to terminate or remove, am
21 I correct that MES, and either Mark Wheeler or David Wyatt
22 asked for Elena to be removed?

23 A. They didn't tell me that. They just told me that they
24 didn't want a person with that type of attitude in the
25 workplace, but they will leave it up to Tito Contractors.

1 Q. Didn't they tell you to talk to her?

2 A. I don't remember.

3 MR. GODOY: Your Honor, if I can just have a moment?

4 JUDGE AMCHAN: Yeah.

5 (Off the record.)

6 JUDGE AMCHAN: We're back on the record.

7 Q. BY MR. GODOY: Mr. Berganza, you decided -- or after
8 David Wyatt and Mark Wheeler said that it was up to who to
9 fire Elena, was it up to you?

10 A. I called the office and I let them know over the phone
11 what David and Mark told me. And Davys Ramos asked me what
12 do I think. She told me that Maria Chavez had many warnings
13 and letters in her file. I told her to send me a copy of
14 the file so I can read it. She sent it to me. I read it.
15 After that, I decided that she needed to be removed.

16 Q. So it was you that made the decision that she had to be
17 removed, correct?

18 A. I let my supervisors know, and the last decision was
19 mine.

20 Q. It was Davys Ramos that said it was up to you?

21 A. Yes, because she had already previously spoke with Alex
22 and Kenny Brown.

23 Q. So they deferred to you, correct?

24 A. Correct.

25 Q. Am I correct that you notified Maria Elena that she was

1 JUDGE AMCHAN: Okay. It's received.

2 (General Counsel's Exhibit 81(a) through 81(c) received in
3 evidence.)

4 MR. GODOY: I would move for the admission of --

5 MS. SILAS: 79?

6 MR. GODOY: -- 92, Your Honor, unless it's already been
7 received.

8 MS. SILAS: It has.

9 MS. JANDRAIN: 92 is already in.

10 MR. GODOY: I think we're squared away.

11 JUDGE AMCHAN: Okay.

12 MR. GODOY: Your Honor, I have no more questions for
13 Mr. Berganza at this time.

14 JUDGE AMCHAN: Do you want to ask him questions now or
15 call him later or what?

16 MS. JANDRAIN: Can we take a short break? We obviously
17 already have his statement, but if there's any other Jencks
18 material or anything else they have, we'd ask for copies of
19 that. And can we take just a short break?

20 JUDGE AMCHAN: Sure, we'll take five minutes.

21 (Off the record from 11:34 p.m. to 11:44 p.m.)

22 CROSS-EXAMINATION

23 Q. BY MS. JANDRAIN: Good afternoon, Mr. Berganza. How
24 often do you interact with Mark Wheeler and David Wyatt?

25 A. Mark Wheeler, mostly every day; with David Wyatt, when

1 A. They are the package, bales, that before they used to
2 make 20, 18 or 20.

3 Q. They look like bales of hay but maybe a little bigger
4 and heavier, right?

5 A. Yes.

6 Q. Okay. And at what point in the production are the bales
7 made?

8 A. They call it pack plastic.

9 Q. Okay. And do the number of bales that are made have
10 anything to do with measuring production at the facility?

11 THE INTERPRETER: I'm sorry. Could you repeat the
12 question?

13 MS. JANDRAIN: Sure.

14 Q. BY MS. JANDRAIN: Do the number of bales that are made
15 have anything to do with how production is measured?

16 A. Correct.

17 Q. Do you know why MES would care if production was low?

18 A. Because they don't make money.

19 Q. So is the money somehow tied to the production?

20 A. Correct.

21 Q. Okay. Now, going back to the test that's described in
22 General Counsel Exhibit 14, when did the test start?

23 A. 09/09/13.

24 Q. And when did it end?

25 A. 11/27/13.

1 Q. If an employee did well on the test, if they filled
2 several hoppers, that was a good thing, right?

3 A. If they filled several hoppers, yes.

4 Q. Now, this was done at Station 37A, right?

5 A. Correct.

6 Q. Not all of the employees work at 37A, right?

7 A. Usually, no.

8 Q. Okay. So if an employee did well on the test, when they
9 returned to their normal station, did the test results affect
10 your expectations about their production in any way?

11 A. Yes.

12 Q. How so?

13 A. When I'm observing when they were working at 37A station
14 and the number of hoppers they filled, in some employees it
15 was good. The same employees moved to another station, and
16 they started working slow.

17 Q. I'm sorry. Okay. And so how would the test affect your
18 perception of the employees' performance?

19 A. Because they started working slower and they started
20 getting less material.

21 Q. Shifting gears a little bit now, at some point in time,
22 you were friends with Mauricio Bautista, correct?

23 A. Correct.

24 Q. And when he called you about the Union, did you consider
25 him a friend at that point in time?

1 A. That's correct.

2 Q. Did he do anything to help you rent the apartment where
3 you currently live?

4 MS. SILAS: Objection, Your Honor. That's irrelevant.

5 MS. JANDRAIN: It goes to their relationship.

6 JUDGE AMCHAN: I'll allow it. I'm not sure what the
7 relevance is, but I'll figure that out --

8 THE WITNESS: Correct.

9 Q. BY MS. JANDRAIN: What did he do?

10 A. He helped me because I had bad credit.

11 Q. How did he help you?

12 A. He signed the lease with the apartment.

13 Q. Okay. Now, when you spoke with -- well, do you recall
14 about when it was that you first spoke with Mauricio about
15 the Union?

16 A. Not exactly.

17 Q. Do you know approximately what month it was?

18 A. I cannot say the month.

19 Q. Was it before Halloween?

20 A. I think so.

21 Q. Okay. And when you spoke with Mauricio and later with
22 Sandro and James, were you interested in joining the Union?

23 A. At the beginning, yes.

24 Q. Okay. Now, there's been some testimony about a
25 conversation that you had with James Coats where you asked

1 him if certain employees had signed authorization cards. Do
2 you remember that testimony?

3 A. Yes.

4 Q. And why did you ask about those specific employees?

5 A. Because there were rumors at work that they were the
6 people who were handling the place, and whatever they wanted
7 or requested, they would gather a group and they would do it.

8 Q. And why did that affect your decision about whether or
9 not you wanted to help the Union?

10 A. Because I wanted to know, because it was my
11 understanding, and there were rumors that Elizabeth Lemus was
12 the one giving information to the office.

13 Q. What type of information?

14 A. Whatever that would happen at work.

15 Q. Why would it matter if Elizabeth Lemus was giving
16 information to the office?

17 A. Because I was afraid that she would tell Tito if I would
18 sign the card, because the moment when I signed the card,
19 they told me not to say anything until they send a letter to
20 Tito.

21 Q. Okay. So had you told any of your supervisors that you
22 were talking to the Union?

23 A. What supervisor?

24 Q. And I'll focus on the time period. In October and early
25 November, did you ever tell Davys Ramos that you were talking

1 to the Union?

2 A. No, I don't remember saying it.

3 Q. Do you remember telling Alex Pierola or Tito that you
4 were talking to the Union?

5 A. No.

6 Q. Did you tell Kenny Brown that you were talking to the
7 Union?

8 A. No.

9 Q. Okay. Now, James didn't tell you whether or not those
10 employees had signed the cards, right?

11 A. He didn't tell me. He only mentioned one name.

12 Q. This is when he said Maria?

13 A. Correct.

14 Q. Okay. And he told you that he couldn't share the
15 information because you were a supervisor, right?

16 A. Correct.

17 Q. Now, what was Mauricio's title?

18 A. Supervisor.

19 Q. How long had he been a supervisor for?

20 A. I worked for him, with him around two or three years
21 when he was a supervisor until now. I believe he's still a
22 supervisor.

23 Q. Okay. And did Mauricio or Sandro or James ever tell you
24 that you could not be a member of the Union?

25 A. No.

1 Q. When is the first time you learned that you could not be
2 a member of the Union?

3 A. I think it was when she met with me, and I think she
4 told me that a supervisor cannot be part of the Union.

5 Q. When you say she, you're referring to me, right?

6 A. Yes.

7 Q. Okay. And do you recall when it was that we first met?

8 A. I don't remember exactly the date, but I think it was
9 before Christmas.

10 Q. Was it after Thanksgiving?

11 A. Yes.

12 Q. Okay. Have you seen a copy of the November 14th letter
13 that the Union sent to Tito Contractors?

14 A. No.

15 Q. Turning now to the terminations of the employees from
16 the MES facility --

17 MS. JANDRAIN: I know he's already testified about this
18 at length, so I'm not going to re-cover the same things.
19 I'll try not to.

20 JUDGE AMCHAN: I appreciate that.

21 MS. JANDRAIN: Okay.

22 Q. BY MS. JANDRAIN: Let's talk first about Maria Sanchez.
23 Do you recall when she was fired?

24 A. Not exactly. I think it was October 30th.

25 Q. Did someone from MES ask for her removal?

1 Q. Okay. Now, since January of 2013, there have been other
2 employees besides Ms. Monroy and the five women we've been
3 discussing who have been fired from the Montgomery County
4 recycling facility, correct?

5 A. How so?

6 Q. Let me rephrase the question. Besides Ms. Monroy and
7 the five women that we've been discussing, have there been
8 other Tito employees that have been fired?

9 MS. SILAS: Objection. I'm not sure -- are you asking,
10 like, during his employment or in infinity --

11 MS. JANDRAIN: Since --

12 MS. SILAS: -- since MES has, or Tito has been doing
13 business with MES? He's only been there three years.

14 MR. GREENBAUM: What's the objection?

15 MS. SILAS: I mean --

16 MR. GREENBAUM: It's a speaking objection. I don't
17 understand --

18 MS. SILAS: Yeah --

19 MS. JANDRAIN: Since January -- I'll clarify.

20 Q. BY MS. JANDRAIN: Since January 2013, since Ms. Monroy's
21 termination, have there been other Tito employees that worked
22 at the Montgomery County facility who have been fired?

23 A. Including the one that happened recently, fired, yes.

24 Q. Okay. Do you remember somebody by the name of
25 Sandra Melgar?

1 A. Yes.

2 Q. Who is she?

3 A. She was Tito's employee working at the recycling plant.

4 Q. Was she fired?

5 A. Yes.

6 Q. Do you remember when that was?

7 A. No.

8 (Respondent's Exhibit 4 marked for identification.)

9 Q. BY MS. JANDRAIN: Okay. I'm going to show you a
10 document that's been marked as Respondent's Exhibit 4. Is
11 that your signature on the last page of the document?

12 A. Yes.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. Those are the notes that I made when I was talking her
17 and the times that Mark Wheeler came to me about her
18 performance.

19 Q. Did you draft this document?

20 A. Yes.

21 Q. Okay. And this is a true and accurate copy of this
22 statement concerning Ms. Melgar?

23 MR. GODOY: Objection, Your Honor. Objection. This
24 employee, when was she fired? May I ask?

25 MS. JANDRAIN: I'm about to ask him that.

1 Q. Okay. Can I point your attention to the second page of
2 the statement? Do these paragraphs help to refresh your
3 recollection about when she was terminated?

4 A. I see that she was fired April 19th, 2013.

5 Q. And do you recall why her employment was terminated?

6 A. Low performance.

7 Q. And did MES ask you to remove her?

8 A. Yes.

9 Q. Okay. Are you familiar with somebody by the name of
10 Anely Cavallini?

11 A. Yes.

12 Q. Who is that?

13 A. She was a -- contractor's employee at the recycling
14 plant.

15 Q. Where did she work?

16 A. At the recycling plant.

17 Q. Did she work at a specific station at the plant?

18 A. Usually many of them.

19 Q. Okay. Does she still work for Tito at the plant?

20 A. No.

21 Q. What happened?

22 A. Very low performance.

23 Q. Was she fired?

24 A. Yes.

25 (Respondent's Exhibit 5 marked for identification.)

1 Q. BY MS. JANDRAIN: I'm going to hand you what's been
2 marked as Respondent's Exhibit 5. Do you recognize this
3 document?

4 A. Yes.

5 Q. What is it?

6 A. Those are the notes that I had taken when I was talking
7 to her.

8 Q. Did you provide these notes to anybody?

9 A. Davys Ramos.

10 Q. Okay. And did you share a copy with Anely Cavallini?

11 A. Yes.

12 Q. Okay. Now, it looks like the letter has several dates
13 in it. Do you see that?

14 A. Yes.

15 Q. And what happened on those dates?

16 A. The first day, I noticed that she was working slow. I
17 called her and talked to her. She was only using one hand.
18 When I talked to her, I told her that I needed her to do
19 better work.

20 Q. And when was the first time you talked to her?

21 A. January 15, 2014.

22 Q. Did you talk to her again at some point in time?

23 A. February 25th, 2014.

24 Q. What happened on that date?

25 A. Norma Garcia, who worked from MES, told me that she was

1 working slow, that she wasn't doing her job, and that she was
2 moving a lot from the line to sleep when it was not
3 necessary. I called her, and I told her that her coworkers
4 were complaining about her, that she was not doing her job.

5 Q. Okay -- I'm sorry --

6 A. I told her that in order to keep her job, she needed to
7 do a better job, and she told me she was going to do it.

8 Q. And did her performance improve?

9 A. No.

10 Q. When was she terminated?

11 A. I believe it was 04/17/2014.

12 Q. And did anyone from MES ask for her to be removed?

13 A. Not exactly.

14 Q. What happened? Did you have any discussions with anyone
15 at MES besides Norma Garcia about Ms. Cavallini?

16 A. Mark Wheeler.

17 Q. What did you talk to Mr. Wheeler about?

18 A. He came to me, and he told me that she was working slow,
19 very slow. Then I called her to speak with her. And I
20 talked to her, and I told her it was the third time that we
21 are telling you about this. And I decided not to keep her
22 anymore at work.

23 MS. JANDRAIN: Your Honor, we move for the admission of
24 Respondent's Exhibit 5.

25 MR. GODOY: No objection, Your Honor.

1 JUDGE AMCHAN: It's received.

2 (Respondent's Exhibit 5 received in evidence.)

3 Q. BY MS. JANDRAIN: Mr. Berganza, do you know somebody by
4 the name of Karen Hernandez?

5 A. Yes.

6 Q. Who is Ms. Hernandez?

7 A. She was an employee at the recycling plant for Tito
8 Contractors.

9 Q. Did she work at a specific position on the line?

10 A. Everywhere.

11 Q. Okay. And was her employment terminated at some point
12 in time?

13 A. Yes.

14 Q. Do you remember why her employment was terminated?

15 A. Many absent day without demonstrating the reason why she
16 was absent and a little bit of negativity at work.

17 Q. And when you say absences, you mean she missed work that
18 day?

19 A. Yes.

20 Q. Okay. And do you recall when her employment was
21 terminated?

22 A. Not exactly.

23 (Respondent's Exhibit 6 marked for identification.)

24 Q. BY MS. JANDRAIN: I'm going to hand you what we've
25 marked as Respondent's Exhibit 6. Have you seen this

1 document before?

2 A. Yes.

3 Q. What is it?

4 A. The termination letter.

5 Q. Is this a true and accurate copy of the document that
6 you saw?

7 A. Yes.

8 Q. Okay. And does it help refresh your recollection as to
9 the date of her termination?

10 A. Yes.

11 Q. When was she terminated?

12 A. 01/13/2014.

13 MS. JANDRAIN: Your Honor, we move for the admission of
14 Respondent's Exhibit 6.

15 MR. GODOY: No objection, Your Honor.

16 JUDGE AMCHAN: Received.

17 (Respondent's Exhibit 6 received in evidence.)

18 Q. BY MS. JANDRAIN: Did MES ask for Ms. Hernandez to be
19 terminated?

20 A. No.

21 Q. Who made that decision?

22 A. That was between me and Mr. Maximo Pierola.

23 Q. And why was it significant that she had several
24 unexcused absences?

25 A. I don't know. She only approached me and tell me that

1 she didn't feel good and she had any personal problems.

2 Q. But when an employee doesn't show up for work, do you
3 have to do anything to fill that spot?

4 A. Yes. I have to try to find a way to find somebody to
5 cover the space.

6 Q. Mr. Berganza, I think during your direct testimony,
7 there was some discussion about meetings that you had with
8 each of the employees in your office in December. Do you
9 remember that?

10 A. Yes.

11 Q. And during those meetings, you testified that you gave
12 information about the salary of Mr. Coats and Mr. Baiza. Do
13 you remember that?

14 A. Correct.

15 Q. During those meetings, did you ever ask any of the
16 employees who they were going to vote for?

17 A. No, because they decide whatever they want to do.

18 Q. What did you tell the employees about the Union, if
19 anything?

20 A. I only read the paper that they gave me for me to read
21 to them explaining how much he makes and Mr. Coats and if
22 they knew that they were going to take away 5 percent of
23 their paycheck.

24 Q. When you say the paper they gave you, who are you
25 referring to?

1 A. To Ms. Kim.

2 Q. To me?

3 A. Yeah.

4 Q. Okay. And do you recall having a meeting with the
5 employees where you handed out some other sort of packet to
6 the employees?

7 A. Yes.

8 Q. What was the packet that you remember handing out?

9 A. The packet that Mr. Maximo Pierola sent to me?

10 Q. Um-hum.

11 A. To give it around the employees and to read it to them
12 at that moment for a court situation that Mr. Brown had with
13 Mauricio Bautista.

14 Q. I think this was one of the exhibits that you saw during
15 your direct testimony, correct?

16 A. I think so.

17 Q. And when you gave the employees that packet, were they
18 standing in a group or --

19 MR. GODOY: Objection, Your Honor. Just to make the
20 record clear, I don't think it got showed to Mr. Berganza --

21 MS. JANDRAIN: Okay.

22 MR. GODOY: Going to show it to him. Just to clarify.

23 MS. JANDRAIN: Yeah, I --

24 JUDGE AMCHAN: Well --

25 MR. GODOY: I believe it's --

1 MS. JANDRAIN: I mean, I --

2 JUDGE AMCHAN: If this has to do with the -- so you have
3 an objection?

4 MR. GODOY: Your Honor, yes. The record is not clear.
5 I never showed him that document.

6 MS. JANDRAIN: Okay.

7 MR. GODOY: So I never asked him about it.

8 MS. JANDRAIN: Okay. Let me --

9 Q. BY MS. JANDRAIN: Mr. Bautista, I'm going to show you
10 what's been previously marked as General Counsel's Exhibit
11 43 --

12 MS. SILAS: Berganza, not Bautista.

13 Q. BY MS. JANDRAIN: I'm sorry, Mr. Berganza, do you
14 recognize that document?

15 A. Yes.

16 Q. And is that the packet that you handed out that day?

17 A. Yes, correct.

18 Q. Okay. And where were the employees standing when you
19 gave them the packet?

20 A. In the maintenance office.

21 Q. Did you say anything when you handed them the packet?

22 A. I only read what the packet said.

23 Q. And what specifically did you read?

24 A. Everything.

25 Q. Everything on the -- from the transcript pages?

1 A. And the pages that are in Spanish.

2 Q. You didn't read the English version?

3 A. I read it after everybody left.

4 Q. Okay. And did you explain to the employees what it was?

5 A. Yes. I explained to them that it was about the
6 situation that was going on with the Union.

7 Q. Okay. Did you ever tell the employees that they would
8 have problems with ICE if they voted for the Union?

9 A. No.

10 Q. Did you ever threaten any of the employees, threaten
11 their immigration or their legal status if they voted for the
12 Union?

13 A. No.

14 Q. I'm going to take that back just -- thank you.

15 JUDGE AMCHAN: So is this an exhibit that's in evidence?

16 MS. JANDRAIN: I believe so. It's General Counsel's
17 Exhibit 43.

18 MR. GODOY: Yes, Your Honor, it was offered.

19 JUDGE AMCHAN: You can go, and I'll catch up.

20 MS. JANDRAIN: I have no further questions, Your Honor.

21 JUDGE AMCHAN: Anything on redirect?

22 MR. GODOY: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 Q. BY MR. GODOY: Mr. Berganza, this policy that you
25 testified about, that employees have to go to you first

1 before they go to MES, is that written anywhere?

2 A. I don't have any writing. They only have notified that
3 over the phone.

4 Q. And who notified you about this over the phone?

5 A. Not sure if Davys Ramos did it or Maximo Pierola.

6 Q. And does this rule apply regardless of what the issue
7 is?

8 A. Any type of problem they have, they have to talk to me
9 or the office of Tito Contractors.

10 Q. Okay. So if employees have a complaint about their
11 working conditions, they have to go to you first before they
12 would go to MES, correct?

13 A. They would have to come to me. They cannot go to MES.
14 I go to MES.

15 Q. Now, Mr. Berganza, General Counsel Exhibit 14, which is
16 the performance test you have in front of you, before you
17 administered the test, I believe you previously said that you
18 had a meeting; is that correct or no?

19 A. Correct.

20 Q. And is it your testimony that employees asked to be
21 tested?

22 A. Correct.

23 Q. And these were all the employees that asked to be
24 tested?

25 A. That's what I heard. They all say at the same time.

1 Q. Okay. And where did you hold the meeting?

2 A. In the meeting -- the room where they have lunch.

3 Q. Okay. And this is upstairs on the second floor?

4 A. Correct.

5 Q. Next to the conference room that is used by MES?

6 A. It's the office of the person who is in charge of the
7 county.

8 Q. Who would that be?

9 A. Tom Kusterer.

10 Q. Okay. And is the cafeteria where you had the meeting
11 about the performance tests, is that the cafeteria that's
12 used by MES and Tito employees?

13 A. Correct.

14 Q. Okay. And you also earlier in your direct examination
15 mentioned the locker room?

16 A. Correct.

17 Q. And is that locker room used by both MES and Tito
18 employees?

19 A. Correct.

20 Q. Okay. And are there separate locker rooms for men and
21 women?

22 A. Correct.

23 Q. And about how many of the employees that worked there in
24 October through December were women?

25 A. Twenty, twenty-one.

1 Q. And the remainder were men?

2 A. Correct.

3 Q. Okay. Now --

4 JUDGE AMCHAN: That question that you just asked him
5 about, the Tito's employees?

6 MR. GODOY: Tito and MES --

7 JUDGE AMCHAN: Okay.

8 MR. GODOY: Yes, the number of employees that are women
9 relates to Tito employees --

10 JUDGE AMCHAN: So --

11 Q. BY MR. GODOY: So am I correct that between October of
12 2013 and December of 2013, there were approximately 21 female
13 employees that worked for Tito at the Montgomery County
14 Recycling Center?

15 A. Possibly 21 or maybe more.

16 Q. Okay. And between October of 2013 and December of 2013,
17 how many men were employed there for Tito at the Montgomery
18 County Recycling Center?

19 A. Around four or five.

20 Q. Okay. And earlier you testified that there were about
21 27 to 29 employees that worked for Tito?

22 A. Correct.

23 Q. Now, the policy about talking to -- Tito employees
24 talking to MES employees, does that relate to romantic
25 relationships?

1 A. That's specifically what they're referring to.

2 Q. Okay. So it's not that they can't talk to each other
3 when they're working, correct?

4 A. If they are a man and woman, no, at any moment.

5 Q. So is there a separate seating area in the lunchroom?

6 A. The men eat downstairs and the women eat upstairs.

7 Q. And what's downstairs?

8 A. There's a small brunch room and the maintenance office.

9 Q. I see. Now, Manuel Beltran, is he an employee?

10 A. Yes.

11 Q. For Tito Contractors?

12 A. Yes.

13 Q. And are you related to him?

14 A. No.

15 Q. But you're good friends with him, right?

16 A. Not really.

17 Q. What do you mean not really?

18 A. When you're friends, we speak about your family and
19 other things. With him, I only speak about work.

20 Q. Okay. So you're not as friendly with Manuel as you were
21 with, say, Mauricio Bautista; is that right?

22 A. No.

23 Q. I see.

24 JUDGE AMCHAN: Are all the men that work at the Shady
25 Grove Recycling -- do any of the men who work at the Shady

1 Grove Recycling Center or worked there in October, November,
2 December, did any of them work on the production line?

3 THE WITNESS: I understand that yes.

4 JUDGE AMCHAN: Are there any -- I guess in GC -- were
5 any men tested?

6 THE WITNESS: No.

7 JUDGE AMCHAN:

8 Q. BY MR. GODOY: What does Manuel Beltran do?

9 THE INTERPRETER: I'm sorry?

10 Q. BY MR. GODOY: What does Manuel Beltran do?

11 A. He's in charge of sweeping the floor, that everything
12 stays clean. He relieves somebody who needs to use the
13 bathroom, and he replaced them.

14 Q. Yasmin Ramirez, you testified she was fired for low
15 performance?

16 A. Mainly for disrespecting the workers.

17 Q. I see. Now, I want to refer you to Respondent's
18 Exhibit 5 that you have in front of you. This is a Anely
19 Cavallini letter that you wrote regarding Anely Cavallini?

20 A. Yes.

21 Q. And am I correct that it was normally your practice to
22 speak to employees when they're not performing well?

23 A. Correct.

24 Q. And it's not your practice to immediately report it to
25 David Wyatt or Mark Wheeler, correct?

1 A. Not immediately, but after a second or third time that I
2 speak with the same person, yes.

3 Q. I see. Now, meetings, aside from the performance
4 meeting that you had where you discussed having a test, do
5 you normally meet with employees in groups?

6 A. Always.

7 Q. Okay. But in December, you decided to call employees
8 individually to your office?

9 A. What do you mean?

10 Q. When you spoke to them about the Union?

11 A. Yes.

12 MR. GODOY: May I just have a moment, Your Honor?

13 JUDGE AMCHAN: Yeah, one minute.

14 (Off the record.)

15 JUDGE AMCHAN: Okay. We're back on the record.

16 You don't have anything else?

17 Do you have anything else?

18 MS. JANDRAIN: Just one question.

19 RECROSS-EXAMINATION

20 Q. BY MS. JANDRAIN: For employees where MES asks for their
21 removal, do you have an opportunity to talk to the employees
22 beforehand and try to give them an opportunity to improve
23 their performance, or are you required to remove them?

24 A. If MES tell me that they have to be removed, they have
25 to be removed immediately. If they tell me that we can give

1 them another chance, then we give them another chance.

2 Q. Okay.

3 MS. JANDRAIN: No further questions.

4 JUDGE AMCHAN: Okay.

5 FURTHER REDIRECT EXAMINATION

6 Q. BY MR. GODOY: Mr. Berganza, when you removed Yasmin
7 Ramirez, you didn't immediately remove her, did you?

8 A. No.

9 Q. Why not?

10 A. Mark Wheeler told me to let her finish the week.

11 Q. All right. And I just want to refer you to Respondent's
12 Exhibit 1 --

13 MR. GODOY: Is this 1 or 2?

14 MS. SILAS: I think he has --

15 JUDGE AMCHAN: The contract?

16 MR. GODOY: The contract, yes.

17 THE WITNESS: I have something else to say. Through the
18 course that we're dealing with the situation with Yasmin
19 Ramirez, I was trying to get a transfer. I was not trying to
20 get her removed.

21 Q. BY MR. GODOY: And you didn't say that in your
22 affidavit, did you?

23 A. Yesterday, yes.

24 Q. No, no, but in your affidavit that you provided on
25 December --

1 JUDGE AMCHAN: Well, his affidavit is in the record,
2 right?

3 MR. GREENBAUM: Not yet, Your Honor --

4 MS. SILAS: Yes, it is --

5 MR. GODOY: Well, it is, Your Honor --

6 JUDGE AMCHAN: It is. They moved for its admission, and
7 I allowed it. So you don't have to ask him about it.

8 MR. GODOY: Okay.

9 JUDGE AMCHAN: You can just tell him what's in there and
10 what's not in there.

11 Q. BY MR. GODOY: Mr. Berganza, referring you back to what
12 was marked as Respondent's Exhibit 1, the contract between
13 MES and Tito Contractors --

14 A. Okay.

15 Q. When was the first time you saw Section 3.3, which is
16 where the --

17 A. I don't remember. They show it to me when they, I
18 think, fired the first person. And I think that I had talked
19 with Tito on that occasion, who is Maximo. And then there
20 was a conversation that I think where Maximo wanted MES to
21 send a written letter explaining the reason why that person
22 was going to be removed. Then they showed me the contract.
23 And when they told me that they were only supposed to let me
24 know verbally, that was the first time that I think that I
25 read it.

1 Q. And who is this employee?

2 A. I don't remember.

3 Q. When? When did it happen? Last year?

4 A. A long time ago.

5 Q. You've only been there four years, right?

6 A. I would say maybe a year ago, two years ago. I don't
7 know.

8 Q. Okay.

9 MR. GODOY: I have no more questions, Your Honor.

10 JUDGE AMCHAN: Is he done?

11 MR. GODOY: Your Honor --

12 MS. JANDRAIN: Yes, sir --

13 MR. GODOY: We would simply ask that he not be -- we're
14 not excusing him -- we're excusing him, but we're not
15 releasing him from subpoena because of the possibility of
16 him -- and not having him -- for rebuttal purposes.

17 JUDGE AMCHAN: Okay. He can go back to work now, and if
18 you need him, you'll let the Respondent know?

19 MR. GODOY: Right, Your Honor.

20 JUDGE AMCHAN: All right. You can sit down.

21 (Witness excused.)

22 JUDGE AMCHAN: It strikes me as a good time to break for
23 lunch. How much time do you want?

24 MR. GREENBAUM: An hour?

25 MR. GODOY: An hour is fine, Your Honor.

1 JUDGE AMCHAN: 2:10.

2 MR. GODOY: 2:10?

3 JUDGE AMCHAN: Well, actually, I'm only giving you 58
4 minutes.

5 (Whereupon, at 1:10 p.m., a lunch recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 (Time Noted: 2:20 p.m.)

3 JUDGE AMCHAN: Good morning -- good afternoon. If you
4 could raise your right hand?

5 (Whereupon,

6 YASMIN A. RAMIREZ

7 was called as a witness by and on behalf of the General
8 Counsel and, after being first duly sworn, was examined and
9 testified, through an interpreter, as follows:)

10 JUDGE AMCHAN: Okay. Have a seat. Be sure and speak
11 very loudly because that microphone just records. It doesn't
12 make it louder.

13 DIRECT EXAMINATION

14 Q. BY MS. SILAS: Good afternoon, Yasmin.

15 A. Good afternoon.

16 Q. My name is Letitia Silas. I'm Counsel for the General
17 Counsel. I'll be asking you some questions today. If at any
18 point you don't understand a question, please just say so.
19 Feel free to ask for clarification. Okay. And if at any
20 time you need a break, please just say so.

21 A. Thank you.

22 Q. Now, would you please state and spell your full name for
23 the record?

24 A. My name is Yasmin Anabel Ramirez, J-a-s-m-i-n

25 A-n-a-b-e-l R-a-m-i-r-e-z.

1 Q. Is it Yasmin with a Y or Jasmin with a J?

2 A. Okay, Y, Y-a-s-m-i-n, Yasmin.

3 Q. And I'm going to just ask you to speak up, okay?

4 A. Okay.

5 Q. Now, are you employed?

6 A. Yes.

7 Q. And where are you employed?

8 A. In the mall at Wheaton.

9 Q. And do you work for any particular company inside of the
10 Wheaton Mall?

11 A. Yes.

12 Q. And what company do you work for?

13 A. Auntie Anne's.

14 Q. Okay. And what type of company is that?

15 A. Food.

16 Q. All right. Now, what is your position there?

17 A. Employee.

18 Q. Have you ever been employed by Tito Contractors?

19 A. Yes.

20 Q. Okay. And when did you stop working for the Company?

21 A. December 6, 2013.

22 Q. Why did you stop working for the Company?

23 A. They fired me.

24 Q. And at the time you were fired, how long had you been
25 employed by the Company?

1 A. Six years.

2 Q. All right. Now, do you have any relatives who work for
3 Tito Contractors?

4 A. Yes.

5 Q. Who?

6 A. My husband.

7 Q. And what is his name?

8 A. Jose Jimenez.

9 Q. And what type of work does he do for the Company?

10 A. He works in maintenance.

11 Q. I see. Now, while you were employed by Tito
12 Contractors, what was your job title?

13 A. Employee.

14 Q. Okay. And did you work at any particular facility or
15 plant?

16 A. Yes.

17 Q. And where was the location of your workplace?

18 A. Rockville, Maryland.

19 Q. Do you know the name of the facility?

20 JUDGE AMCHAN: I think we can kind of brush through
21 this.

22 MS. SILAS: All right. So I'll just leave --

23 JUDGE AMCHAN: There's no dispute --

24 Q. BY MS. SILAS: Was that the Montgomery County Recycling
25 Center? Is that correct?

1 A. Yes.

2 Q. All right. Now, you worked Monday through Friday,
3 right, five days a week?

4 A. Yes.

5 Q. And Monday through Thursday, 10 hours a day, correct?

6 A. Yes.

7 Q. Okay. And on Fridays, you worked an additional 6 to 10
8 hours, correct?

9 A. Yes.

10 Q. All right. Now, you weren't the only Tito employee at
11 that facility, right? There were 25 others?

12 A. Correct.

13 Q. And I'm going to correct myself. There were 25 women
14 and four men, correct?

15 A. Correct, yes.

16 Q. And your job responsibilities were to sort recyclable
17 materials, correct?

18 A. Yes.

19 Q. And all the other women at the facility did the same job
20 as you, correct?

21 A. Yes.

22 Q. Okay. Now, you did have to wear a uniform and certain
23 equipment for work, correct?

24 A. Yes.

25 Q. You wore that every day, correct?

1 A. Yes.

2 Q. Okay. And that was a shirt, a vest, an apron?

3 A. Yes.

4 Q. A face mask, a hard hat?

5 A. Yes.

6 Q. Gloves?

7 A. Yes.

8 Q. Goggles?

9 A. Yes.

10 Q. Earplugs?

11 A. Yes.

12 Q. You did say hard hat, correct?

13 A. Yes.

14 Q. Now --

15 JUDGE AMCHAN: And just -- and she answered yes to all
16 of them?

17 THE INTERPRETER: Yes.

18 JUDGE AMCHAN: All right.

19 MS. SILAS: Okay.

20 Q. BY MS. SILAS: And the other 25 women who also worked
21 doing sorting work also wore that same type of equipment and
22 clothing to work every day, correct?

23 A. Correct.

24 Q. Now, you did have a supervisor at that facility,
25 correct?

1 A. Yes.

2 Q. And that was Tomas Berganza, correct?

3 A. Yes.

4 Q. And he was your supervisor for three years, correct?

5 A. Yes.

6 Q. Okay. Now, to avoid any type of confusion, I will just
7 refer to Tomas Berganza as just Tomas, okay?

8 A. Okay.

9 Q. Now, we know that Tito employees weren't the only ones
10 at the Shady Grove facility, right?

11 A. Yes.

12 Q. There were other employees there, and they were employed
13 by MES, correct?

14 A. Yes.

15 Q. And there was about between 9 and 10 MES employees
16 there, correct?

17 A. Correct.

18 Q. And the MES employees were supervised by MES
19 supervisors, correct?

20 A. Yes.

21 Q. And the MES supervisors are Mark Wheeler and
22 David White, correct?

23 A. Correct.

24 Q. All right. So we know you're familiar with the Painters
25 Union, correct?

1 A. Correct.

2 Q. And you're familiar with Sandro Baiza, correct?

3 A. Correct.

4 Q. And you know he's a union organizer, correct?

5 A. Correct.

6 Q. And you know James Coats, too, right? And you know he's
7 a union organizer as well, too?

8 A. Correct.

9 Q. And while you were at the Shady Grove facility, Tito's
10 employees there were trying to form a union, correct?

11 A. That is correct.

12 Q. Okay. Did you participate in those activities?

13 A. Yes.

14 Q. And when did you first get involved with trying to form
15 a union at the Shady Grove facility?

16 A. The first day of the month of October, the year of 2013.

17 Q. Okay. And how did you find out about the Union?

18 A. Through a friend that used to live with us in the
19 apartment with me and my husband. He told us about the
20 Union.

21 Q. Okay. And who is that friend?

22 A. His name is Nestor Sanchez.

23 Q. Okay. And does Nestor Sanchez work for Tito
24 Contractors?

25 A. Used to work.

1 Q. Okay. When did he stop working for the Company?

2 A. Like three months ago.

3 Q. Okay. Now, as far as you know, was that the first time
4 he stopped working for the Company?

5 A. No. He left the Company before.

6 Q. He left or was -- do you know whether he left or whether
7 he was fired?

8 MR. GREENBAUM: Objection, leading, Your Honor. She
9 said he left.

10 JUDGE AMCHAN: Yeah.

11 MR. GREENBAUM: I mean, this is like leading the
12 witness.

13 MS. SILAS: Okay. What do you -- okay. What do you
14 mean by he left --

15 MR. GREENBAUM: Well, it's too late now. Move to
16 strike.

17 MS. SILAS: She doesn't speak any English. She can't
18 understand a word --

19 MR. GREENBAUM: No, no, they got the translation.

20 JUDGE AMCHAN: Well, she can ask what she knows about --

21 MR. GREENBAUM: Could we have an instruction that she
22 should not suggest an answer in a question. I know the
23 beginning part was leading because that was just
24 background --

25 JUDGE AMCHAN: Right.

1 MR. GREENBAUM: -- but now we're getting into the
2 testimony, it sounds like --

3 MS. SILAS: Okay.

4 JUDGE AMCHAN: Well, because --

5 MR. GREENBAUM: And the questions are suggesting an
6 answer.

7 JUDGE AMCHAN: Well, you'll object to a leading
8 question, and I'll rule.

9 Q. BY MS. SILAS: What do you mean by he left?

10 A. He was fired.

11 Q. Thank you. Now, before Nestor told you about the Union,
12 had you ever met anyone from the Union?

13 A. No.

14 Q. And did he tell you about anybody in particular with the
15 Union?

16 A. Yes.

17 Q. Who did he tell you about?

18 A. About Mr. Sandro Baiza.

19 Q. Okay. Did you ever meet with Mr. Sandro Baiza?

20 A. Yes.

21 Q. Now, when was the first time that you met with Sandro?

22 A. During the first days of the month of October of 2013.

23 Q. And where did you meet him?

24 A. At the union offices.

25 Q. And did you meet with him alone?

1 A. No, other coworkers as well.

2 Q. Could you name the other coworkers who were with you?

3 A. Yes. Elizabeth Lemus, Reyna Sorto, Aracely Ramos, and
4 Maria Chavez and myself.

5 Q. And why were you meeting with Sandro?

6 A. Because we needed help with the mistreatment that we --
7 in the Company.

8 Q. And what type of mistreatment did you discuss with
9 Sandro?

10 A. During those days, we were wearing those big glasses,
11 wearing goggles that would provoke us to be dizzy, to throw
12 up, pain in our eyes, and that's why we requested him to help
13 us.

14 Q. And during your meeting with Sandro, did you do anything
15 in particular to show that you wanted the Union's help?

16 THE INTERPRETER: Could you repeat that again, please?
17 I'm sorry.

18 Q. BY MS. SILAS: During the meeting with Sandro, did you
19 do anything in particular to show that you wanted the Union's
20 help?

21 A. Yes.

22 Q. And what did you do?

23 A. I filled out the card, and I signed it.

24 Q. Now, before meeting with Sandro, did you tell any Tito
25 supervisors about the problems you had with the goggles?

1 A. Yes.

2 Q. Who did you tell?

3 A. Mr. Tomas Berganza.

4 JUDGE AMCHAN: I couldn't hear.

5 THE WITNESS: Mr. Tomas Berganza.

6 Q. BY MS. SILAS: And did you tell him about the problem
7 only once?

8 A. No.

9 Q. How many times did you tell him about the problem?

10 A. Twice.

11 Q. And let's focus on the first time. When did you tell
12 Tomas about the goggles the first time?

13 A. It was in mid-September in the year 2013.

14 Q. And were you alone when you told him?

15 A. Yes.

16 Q. Where were you?

17 A. His office inside.

18 Q. Did he say he would replace the glasses or the goggles?

19 A. He said he was going to try.

20 Q. Okay. And when was the second time that you told Tomas
21 about the problems with the goggles?

22 A. The next day.

23 Q. Okay. And where were you when you told him?

24 A. In his office.

25 Q. And were you alone?

1 A. No.

2 Q. Okay. Who was with you? Don't -- and let me re-ask the
3 question. I'm sorry. Were other coworkers with you?

4 A. Yes.

5 Q. About how many?

6 A. Five.

7 Q. All right. Now, did Tomas say anything in response to
8 your concerns about the goggles at that time?

9 A. He said that we were making all that noise because we
10 looked ugly with those goggles.

11 Q. Now, following your visit with Sandro, did you tell any
12 of your coworkers about the Union?

13 A. Yes.

14 Q. And where did you talk to them?

15 A. In the lunchroom at work.

16 Q. Did you talk to them during work hours?

17 A. No, during my break.

18 Q. Now, following your meeting with the Union, did anything
19 about your working conditions change?

20 A. Yes.

21 Q. And what changed?

22 A. They gave us goggles that were more comfortable to work
23 with.

24 Q. Okay. And who gave you those?

25 A. Tomas Berganza.

1 Q. Now, did you ever meet with the Union again?

2 A. Yes.

3 Q. Did you meet with the Union again more than one time?

4 A. Yes.

5 Q. About how many more times did you meet with the Union
6 after the first time?

7 A. Four times.

8 Q. And when was the second time?

9 A. October 11th, 2013.

10 Q. And where was that meeting?

11 A. In the union offices.

12 Q. Okay. And were you alone?

13 A. No.

14 Q. And were any of your coworkers present?

15 A. Yes.

16 Q. And when was the third meeting?

17 A. It was towards the end of October 2013.

18 Q. And where was that meeting?

19 A. In the Wendy's restaurant near our job.

20 Q. Were you the only employee at that meeting?

21 A. No.

22 Q. Were any of your coworkers there?

23 A. Yes.

24 Q. Now, when was the fourth meeting with the Union?

25 A. It was in November 2013.

1 Q. Do you know when in November?

2 A. It was at the beginning of November.

3 Q. And where was that meeting?

4 A. In the Union's office.

5 Q. And were you alone at that meeting?

6 A. No.

7 Q. Were any of your coworkers there?

8 A. Yes.

9 Q. Okay. Did you attend any other union meetings prior to
10 your discharge?

11 A. Yes.

12 Q. Okay. How many more?

13 A. How many people or how -- can you repeat the question,
14 please?

15 Q. Other than the meetings we already talked about, how
16 many more meetings did you attend with the Union before you
17 were fired?

18 A. One more.

19 Q. Okay. And when was that meeting?

20 A. Towards the end of November 2013.

21 Q. And where was that meeting?

22 A. The Union's office.

23 Q. Okay. And were you there alone?

24 A. No.

25 Q. Were any of your coworkers there?

1 A. Yes.

2 Q. Now, following that final -- or that -- the last meeting
3 with the Union that you just testified about, did you ever
4 hear any supervisors mention that meeting?

5 A. Yes.

6 Q. And who?

7 A. Mr. Tomas Berganza.

8 Q. When did you hear Tomas mention that meeting?

9 A. Two days after the meeting.

10 Q. Did he mention it to you?

11 A. He was on the phone.

12 Q. And was he talking to you?

13 A. No.

14 Q. Okay. Where were you when you heard him mention the
15 meeting?

16 A. I went to his office to get some gloves to start
17 working.

18 Q. Okay. And where was he?

19 A. In the office.

20 Q. Okay. Was he in the same office that you were in?

21 A. Yes.

22 Q. Okay. And what was the distance between the two of you?

23 A. Around five feet.

24 Q. Okay. And so you testified that he was talking on the
25 phone. Which way was he facing?

1 A. He was facing the wall, giving me his back.

2 Q. Now, do you usually go in his office to get your gloves?

3 A. Yes.

4 Q. And what did you hear him say?

5 A. He said that he needed to know the names of the person
6 that were present in the meeting with the Union.

7 Q. I see. And what language was he speaking when you heard
8 him?

9 A. Spanish.

10 Q. And, Ms. Ramirez, you testified earlier that you were
11 fired from Tito Contractors on December 6th. Did you work on
12 that day?

13 A. Yes.

14 Q. At what time were you fired?

15 A. At 2:10 p.m.

16 Q. And who fired you?

17 A. Mr. Tomas.

18 Q. What happened on that day?

19 A. On that day, I arrived to work normally. We got there
20 at 4:00 in the morning. Then Hilda Rodriguez was working
21 there.

22 Q. And who is Hilda Rodriguez?

23 A. She works for MES.

24 Q. Okay.

25 A. And then she started working in an inappropriate way.

1 Q. What was inappropriate about the way she was working?

2 A. She started throwing the material to the back, like,
3 throwing it right here to this arm.

4 Q. To whose arm?

5 A. My arm. Then at 1:10, she got there laughing. And then
6 she was saying we are working here now; tomorrow, not
7 anymore.

8 Q. Do you know why she was saying that to you?

9 A. No, I don't know.

10 Q. Okay. What happened next?

11 A. Then Ms. Rodriguez told me to go to the office, that
12 Tomas wanted to talk to me.

13 Q. And did you go to Tomas' office?

14 A. Yes.

15 Q. And was Tomas there?

16 A. Yes.

17 Q. And where was he?

18 A. He was at the door, at the entrance.

19 Q. And where did you position yourself when you arrived to
20 his office?

21 A. In front of him.

22 Q. Was anyone else present?

23 A. Yes.

24 Q. Who else was present?

25 A. Manuel Beltran.

1 Q. And where was he?

2 A. He was to my back.

3 Q. And what happened during that meeting?

4 A. I asked Mr. Berganza if he wanted to speak with me. He
5 said, yes, that he has some news for me. He told me that
6 Montgomery County and MES, they didn't want me to work there
7 anymore. I asked him why. And then he told me because I was
8 expressing myself in a bad way towards the coworker. Then I
9 said to him that who was I expressing myself badly, and he
10 didn't want to tell me.

11 Q. I see. Did he mention the names of any particular
12 coworkers of yours?

13 A. No.

14 Q. And did he mention anything about your performance on
15 the sorting line?

16 A. No.

17 Q. Did you receive anything at this meeting?

18 A. Yes.

19 Q. What did you receive?

20 A. My termination letter.

21 Q. And who gave that to you?

22 A. Tomas.

23 Q. And I will refer you to General Counsel's Exhibit 61.

24 MS. SILAS: I'm going to move these out of the way here.

25 Do you have one, Your Honor?

1 JUDGE AMCHAN: Yeah.

2 Q. BY MS. SILAS: Are you familiar with that document?

3 A. Yes.

4 Q. And what is it?

5 A. That's the termination letter that Mr. Berganza gave to
6 me.

7 Q. Now, this document is written in English. Can you read
8 English?

9 A. A few words.

10 Q. Can you read this letter?

11 A. No. I can do it, but it takes me a long time.

12 Q. I see. Now, did Tomas explain what this document says?

13 A. No.

14 Q. Now, prior to your discharge, had you ever been
15 counseled by Tomas about your performance?

16 A. No.

17 Q. And prior to your discharge, had Tomas ever told you
18 that MES was dissatisfied with how you were working?

19 A. No.

20 Q. And did he ever inform you that MES was monitoring you?

21 A. No.

22 Q. Now, prior to your discharge, had anyone from MES ever
23 said anything to you about your performance?

24 A. No.

25 Q. Now, Ms. Ramirez, are you familiar with someone by the

1 name of Martha Serpas?

2 A. Yes.

3 Q. And who was she?

4 A. She's a Tito's worker. She works in the same place that
5 I used to work.

6 Q. I see. I want to direct your attention to 2013. Did
7 you have any personal confrontations with Ms. Serpas while
8 you were employed at Tito Contractors?

9 A. No.

10 Q. Did you witness any confrontations involving Ms. Serpas?

11 A. Yes.

12 Q. And when was that confrontation?

13 A. It was in October 2013.

14 Q. I see. And who was Ms. Serpas having the confrontation
15 with?

16 A. With Yasmin Santelis and Norma Garcia.

17 Q. Okay. And how is Yasmin Santelis?

18 A. She's a Tito's worker.

19 Q. And who is Norma Garcia?

20 A. She works for MES.

21 Q. Now, without telling us what each person said at this
22 meeting, what was your understanding of their confrontation?

23 A. Because Ms. Martha Serpas lost some tamales.

24 Q. Do you know where she had gotten them from?

25 A. Yes.

1 Q. Where?

2 A. She bought them to Yasmin Santelis -- from Yasmin
3 Santelis -- sorry.

4 Q. Did you see Ms. Santelis selling the tamales that day?

5 A. Yes.

6 Q. Now, did you say anything about -- I want to go back.
7 Let me withdraw that.

8 When you saw Yasmin Santelis selling the tamales to
9 Martha Serpas, did Martha Serpas pay her at that time?

10 A. No.

11 Q. I see. Now, did you say anything during their
12 confrontation?

13 A. No.

14 Q. Did anyone say anything to you during that
15 confrontation?

16 A. No.

17 Q. Following this incident, did Tomas ever ask you any
18 questions about it?

19 A. No, never.

20 Q. Did he say anything to you about Ms. Serpas?

21 A. No.

22 Q. And following this incident, did Mark Wheeler say
23 anything to you about it?

24 A. No.

25 Q. Did he say anything to you about Ms. Serpas?

1 A. No.

2 Q. Did you ever call Ms. Serpas a stupid old woman?

3 A. Never.

4 Q. Did you ever tease her about her work?

5 A. No.

6 Q. Did you ever say that she can't fill as many hoppers as
7 other people?

8 A. Never.

9 Q. Did you make fun of her because she couldn't find her
10 tamales?

11 A. No.

12 Q. Now, Ms. Ramirez, have you ever heard of the term
13 "racist"?

14 A. Yes.

15 Q. Have you ever called anyone at work a racist?

16 A. Never.

17 Q. Okay. Did you ever call anyone from MES a racist?

18 A. No.

19 Q. Now, earlier you testified that your husband works for
20 Tito Contractors?

21 A. Yes.

22 Q. And what did you say your husband's name is?

23 A. Jose Jimenez.

24 Q. And how long have you guys been married?

25 A. Since 1999.

1 Q. And how long has he been working for Tito Contractors?

2 A. It will be 11 years soon.

3 Q. Do you know whether or not your husband has any disputes
4 with Tito Contractors right now?

5 A. Yes.

6 Q. And what is that dispute?

7 A. He's in an overtime lawsuit.

8 MS. SILAS: No further questions.

9 MS. JANDRAIN: Can we have a copy of her statement,
10 please?

11 MS. SILAS: Okay. I'm providing a copy of the Spanish
12 version of Ms. Ramirez's affidavit. I can get an English
13 translation for you.

14 MR. GREENBAUM: Okay.

15 MS. SILAS: When we had these printed up, we didn't have
16 the English printed up --

17 MS. JANDRAIN: Okay.

18 MS. SILAS: My understanding is that this has to be a
19 signed copy --

20 MS. JANDRAIN: Is it upstairs?

21 MR. GREENBAUM: Is it upstairs?

22 MS. SILAS: Yeah.

23 MR. GREENBAUM: Should we take a break?

24 MS. SILAS: Yeah --

25 JUDGE AMCHAN: Yeah.

1 MS. SILAS: -- because you're going to need it anyway.

2 All right. Okay. And I'll be right back.

3 JUDGE AMCHAN: How much time do you want?

4 MS. JANDRAIN: Just as long as it takes her to get

5 the --

6 MS. SILAS: I'm just going to NxGen.

7 JUDGE AMCHAN: Okay. Well, for the printing and the

8 reviewing --

9 MS. JANDRAIN: Then we'll be ready.

10 JUDGE AMCHAN: Like 10 minutes?

11 MR. GREENBAUM: If that's how long it takes her --

12 MS. JANDRAIN: Sure.

13 MS. SILAS: It's not going to take me more than five

14 minutes to just go and print it up --

15 JUDGE AMCHAN: I'll come back --

16 MS. JANDRAIN: I'll read the --

17 MR. GREENBAUM: Ten minutes, 15 minutes --

18 JUDGE AMCHAN: All right.

19 MS. JANDRAIN: I'll read the Spanish one. Letitia, do

20 you have another Spanish copy so we can show it to her?

21 MS. SILAS: Yeah, yeah, yeah.

22 MS. JANDRAIN: Okay.

23 MR. GREENBAUM: We don't need it now.

24 JUDGE AMCHAN: All right. I'll come back in 10 minutes,

25 and if you need more time, you'll tell me.

1 (Off the record from 2:58 p.m. to 3:16 p.m.)

2 CROSS-EXAMINATION

3 Q. BY MS. JANDRAIN: Good afternoon, Ms. Ramirez. My name
4 is Kim Jandrain. I'm a lawyer for Tito Contractors.

5 A. Good afternoon.

6 Q. You know Tomas Berganza is your supervisor at work,
7 right?

8 A. Yes.

9 Q. And you also know -- I'm sorry -- you also know
10 Mr. Berganza by his nickname, right?

11 A. Of course.

12 Q. And what's his nickname?

13 A. Machin.

14 Q. That not something you call him at work, right?

15 A. I never call him like that.

16 Q. That's something people call him outside of work, right?

17 MS. SILAS: Objection. How does she know what other
18 people call Tomas outside of work?

19 JUDGE AMCHAN: Well, you can ask? I mean --

20 Q. BY MS. JANDRAIN: How do you know that's his nickname?

21 A. Because I've known him for a long time.

22 Q. Okay. And your husband is friends with
23 Mauricio Bautista, right?

24 A. Yes.

25 Q. And are you also friends with Mr. Berganza?

1 A. Yes.

2 Q. Now, you've seen at work, you've seen Tomas give
3 warnings to other employees on occasion, right?

4 A. Yes.

5 Q. For example, you've seen him give warnings to
6 Aracely Ramos?

7 A. Yes.

8 Q. And when I say warnings, I mean verbal and possibly
9 written --

10 JUDGE AMCHAN: Hold on one second. Is the door locked?
11 I thought I heard someone knocking. Either that or it's my
12 imagination. Oh, maybe it's the workers upstairs --

13 MS. JANDRAIN: Construction.

14 JUDGE AMCHAN: Okay. I think you can continue.

15 Q. BY MS. JANDRAIN: Okay. You've also seen Tomas give
16 warnings to Maria Chavez, right?

17 A. Yes.

18 Q. And you've seen him give warnings to Elizabeth Lemus,
19 right?

20 A. Yes.

21 Q. And on at least one occasion, you saw him send
22 Elizabeth Lemus and Sandra Melgar home while they were
23 working, right?

24 A. Correct.

25 Q. Okay. Now, in the plant or the facility, there's a

1 mezzanine level suspended from the ceiling, right?

2 A. Yes.

3 Q. And you've seen Tomas walk around the mezzanine level?

4 A. Yes.

5 Q. And you've seen Mark Wheeler walk around the mezzanine
6 level before?

7 A. Yes.

8 Q. And sometimes when you saw Mark Wheeler up there, was he
9 taking notes?

10 A. On some occasions.

11 Q. Now, I want to talk about the organizing campaign at the
12 Montgomery County facility. As far as you know, the
13 organizing campaign there actually started when Tomas handed
14 out cards, right?

15 A. Yes.

16 Q. You know that he handed out cards in October of 2013,
17 right?

18 A. Yes.

19 Q. And how do you know that?

20 A. Through the coworkers. They told me.

21 Q. Who were those coworkers?

22 A. Martha Serpas, Mariela Valdez, Manuel Beltran,
23 Anibal Diaz.

24 Q. I'm sorry. Was that Manuel Beltran?

25 A. Yes.

1 Q. And Anibal Diaz?

2 A. Anibal Diaz, yes, Anibal Diaz.

3 Q. So they told you that Tomas was trying to get support
4 for the Union; is that right?

5 A. Yes.

6 Q. This was at the end of October 2013, right?

7 A. Yes.

8 Q. Now, you also knew about the Union because of
9 Nestor Sanchez, right?

10 A. Correct.

11 Q. Okay. So October 2013 wasn't the first time you had
12 heard of the Union, right?

13 A. Correct.

14 Q. But Tomas handing out the cards was the first time you
15 knew of the organizing of the facility, right?

16 A. No.

17 Q. When was the first time about the organizing in the
18 facility?

19 A. In September 2013.

20 Q. Do you remember testifying in your statement that the
21 organization started with Tomas passing out union cards?

22 A. I knew before.

23 Q. Okay. So at some point in September you learned of the
24 organizing campaign?

25 A. Yes.

1 Q. And then in October, you also learned that Tomas was
2 trying to get people to sign up for the Union, right?

3 A. Yes.

4 Q. Okay. And this is around the time that you were meeting
5 with the Union to talk about your goggle issues, right?

6 A. Correct.

7 Q. You met with the Union, and you said that you told
8 Sandro and James about the problems with the goggles?

9 A. Yes.

10 Q. And you don't know what happened, but sometime after
11 that meeting, Tomas gave you new glasses, right?

12 A. Yes.

13 Q. Do you know if the Union talked to Tomas about the
14 glasses, or the goggles?

15 A. I don't know.

16 Q. Okay. Do you know somebody by the name of Stedson?

17 THE INTERPRETER: I'm sorry. Can you repeat that again?

18 MS. JANDRAIN: Sure.

19 Q. BY MS. JANDRAIN: Do you know somebody, a Tito employee,
20 by the name of Stedson Linkous?

21 A. Yes.

22 Q. He's the safety coordinator, right?

23 A. Correct.

24 Q. Okay. Has he been to the MES plant before?

25 A. Yes.

1 Q. And do you remember having a meeting at the MES plant
2 where you tried on different goggles?

3 A. Yes.

4 Q. Okay. And after that meeting, they changed the goggles,
5 right?

6 A. But the guy said that they couldn't change the goggles.
7 He only gave us a spray so that the goggles wouldn't get
8 blurry, but he didn't change them.

9 JUDGE AMCHAN: When are we talking about?

10 MS. JANDRAIN: The goggles.

11 JUDGE AMCHAN: No, when?

12 MS. JANDRAIN: Oh.

13 Q. BY MS. JANDRAIN: When did the meeting happen?

14 A. In September.

15 Q. Okay. At what point did the goggles actually change?

16 A. In October.

17 Q. Okay. This is when Tomas gave you the new goggles,
18 right?

19 A. Yes.

20 Q. Okay. Now, during your direct testimony, you talked
21 about a meeting with the Union in November of 2013. Do you
22 remember that?

23 A. Yes.

24 Q. And Sandro actually asked Mauricio to invite Tomas to
25 that meeting, right?

1 A. Yes.

2 Q. Oh, and just to backtrack, Mauricio is your husband's
3 supervisor, right?

4 A. No.

5 Q. He's not? He's just a family friend?

6 A. Yes.

7 Q. Okay.

8 JUDGE AMCHAN: Well, you asked in the present tense.
9 Maybe you want to ask in the past as well?

10 MR. GREENBAUM: Because he --

11 MS. JANDRAIN: Oh.

12 Q. BY MS. JANDRAIN: Was Mauricio ever your husband's
13 supervisor?

14 A. No.

15 Q. Okay. Do you know whether Mauricio is a supervisor?

16 A. Not anymore.

17 Q. At some point was he?

18 A. Used to be.

19 Q. Okay. Going back to the November meeting, you said that
20 Sandro told Mauricio to invite Tomas to the meeting, right?

21 A. Yes.

22 Q. But Mauricio didn't invite Tomas, did he?

23 A. Yes.

24 Q. Okay. And that's because Mauricio felt like maybe some
25 of the women wouldn't be able to talk freely if their

1 supervisor was present, right?

2 MS. SILAS: Objection. Is this speculation, or are you
3 asking about --

4 JUDGE AMCHAN: Well, yeah --

5 MS. JANDRAIN: No, I'm asking because --

6 JUDGE AMCHAN: Well, I guess --

7 MS. SILAS: Did she have a conversation with Mauricio?

8 MS. JANDRAIN: Well, it's in her affidavit --

9 MS. SILAS: Part of her affidavit --

10 JUDGE AMCHAN: Well, if she says that's in the
11 affidavit, go ahead and ask it.

12 THE INTERPRETER: Should I repeat the question?

13 JUDGE AMCHAN: Yeah, I think so.

14 THE WITNESS: Yes.

15 Q. BY MS. JANDRAIN: Okay. And then shortly after that,
16 did you go to the meeting?

17 A. Of course.

18 Q. Okay. And then the next day, or a few days after that,
19 is when you heard Mauricio -- I'm sorry -- when you heard
20 Tomas talking on the phone, right?

21 A. Correct.

22 Q. And you said Tomas had his back to you, right?

23 A. Correct.

24 Q. He didn't know that you were listening to this
25 conversation, right?

1 A. Correct.

2 Q. And you heard him ask for the names of the people that
3 were at the meeting, right?

4 A. Correct.

5 Q. But you also heard him say that Mauricio had already
6 given him the names, right?

7 A. I don't remember.

8 Q. Okay. Let me show you a copy.

9 MS. JANDRAIN: Letitia, do you have -- thanks.

10 Q. BY MS. JANDRAIN: Ms. Ramirez, I'm going to hand you a
11 copy of the statement. And I'll just ask is this your
12 signature at the bottom here?

13 A. Yes.

14 Q. Okay. And this is a copy of the statement that you
15 provided to an NLRB agent in the case, right?

16 A. Correct.

17 Q. Okay. And you gave this statement on December 9th,
18 right?

19 A. Correct.

20 Q. Okay. So was the meeting at the end of October fresh in
21 your mind at that point?

22 A. Yes.

23 Q. Okay. And if you turn to page 6 of the statement --

24 MS. SILAS: Can you also point out on the English --

25 MS. JANDRAIN: Oh, on the English, it's page 5.

1 Q. BY MS. JANDRAIN: Okay. And if you look at page -- I'm
2 sorry -- lines 6 through 8 on page 6 or page 20 through --
3 lines 20 to 22 of the English version, do you see the
4 sentence there that begins, "Yo no se"?

5 A. Yes.

6 Q. Okay. Does this help refresh your recollection about
7 whether Tomas said that he heard -- I'm sorry. Let me start
8 over. Does this help refresh your recollection about whether
9 you heard Tomas on the phone say that Mauricio had also given
10 him the names?

11 A. Yes.

12 Q. Okay. So did you hear Tomas say that Mauricio had given
13 him the names?

14 A. Yes.

15 Q. Okay. Those are the names of the women who were at the
16 meeting?

17 A. I don't know what names he said.

18 Q. He just said, Mauricio had given me the names, right?

19 A. Yes.

20 Q. Okay. Now, you've said that on December 6th, when you
21 had the meeting with Tomas in his office, Manuel Beltran was
22 there also, right?

23 A. Yes.

24 Q. Okay. And Manuel is a Tito employee, right?

25 A. Correct.

1 Q. And it's not -- well, he usually asks -- he usually acts
2 a witness whenever Tomas is going to discipline an employee,
3 right?

4 A. Correct.

5 Q. How do you know that?

6 A. Because Tomas always calls out for him whenever he was
7 going to discipline someone, and many occasions I seen that.

8 Q. You've seen Manuel in the office with Tomas while he's
9 talking to another employee?

10 A. Yes.

11 MS. JANDRAIN: I have no other questions.

12 JUDGE AMCHAN: Anything else?

13 MS. SILAS: Yes.

14 REDIRECT EXAMINATION

15 Q. BY MS. SILAS: Ms. Ramirez, did you hear that Tomas was
16 passing out cards before or after your first meeting with
17 Sandro?

18 A. It was after.

19 Q. And did Nestor tell you about the Union before or
20 after -- let me withdraw that. Did you hear about Tomas
21 passing out union cards before or after Nestor told you about
22 the Union?

23 A. After.

24 Q. How many times had you met with the Union before you
25 heard of Tomas passing out cards?

1 A. Twice.

2 Q. And when did you sign your card?

3 A. The first days of October, in the first meeting.

4 Q. The first meeting with whom?

5 A. With the Union.

6 Q. Now, do you know whether there are any particular
7 employees from the recycling center who were considered to be
8 the leaders of bringing the Union in?

9 A. No.

10 Q. Do you know if any other recycling employees had met
11 with Sandro before you and the other four ladies went to meet
12 the --

13 A. No.

14 Q. Now, just going back to hear your testimony that was
15 pointed out to you that Mauricio didn't invite Tomas to the
16 meeting, the union meeting.

17 A. Yes.

18 Q. Why didn't he invite him?

19 A. Because he said that all the workers will feel more
20 comfortable expressing about all the problems that were going
21 on at work.

22 Q. Without Tomas being there?

23 A. Yes.

24 Q. I see. Now, you testified that you know that Mauricio,
25 or you believe that Mauricio had asked -- had told Tomas the

1 names of certain individuals at the Union?

2 A. I don't think that Mauricio had told him.

3 Q. Well, I'm just going by -- did -- let me just re-ask --

4 ask the question a different way. Did you actually hear

5 Tomas yourself say that Mauricio had given him the names of

6 the people at the union meeting?

7 A. Yes.

8 JUDGE AMCHAN: Anything else?

9 MS. JANDRAIN: No, Your Honor. Can we move -- or could

10 we get her -- since we've read at least part of her

11 statement, can we have her statement admitted into the

12 record?

13 MS. SILAS: Your Honor, we object to that.

14 JUDGE AMCHAN: Well, I don't think the whole thing. I

15 mean, you've examined her about it. The other thing is --

16 MS. SILAS: I'm not sure if she --

17 JUDGE AMCHAN: I want to say that it's wrong, actually,

18 if you just put the -- you can't really use it to impeach her

19 if you haven't, you know, pointed it out to her.

20 MR. GODOY: And, Your Honor, the entire affidavit is

21 hearsay. There's no exception to it. Unless she can -- it's

22 been used --

23 JUDGE AMCHAN: Well, somebody -- well, it's somebody

24 that's in court, but my problem with it -- just pick a part

25 of it, I would ask her about it to confirm that that's what

1 she said, but I don't think it's probative. I mean, if you
2 just put it in and you never asked her -- if there's
3 something on page 3 that you think is helpful to you and you
4 never asked her about it, that's --

5 MS. JANDRAIN: Can I just clarify? I mean, we talked
6 about this a little bit, but can I read the specific
7 statement and ask her if she needs to clarify anything? I
8 mean, Ms. --

9 JUDGE AMCHAN: Well, I would ask her if that's what's in
10 her affidavit, and then --

11 MS. JANDRAIN: Okay.

12 MS. SILAS: -- I guess you could have a follow-up
13 question.

14 MR. GODOY: Your Honor, I think that would be
15 inappropriate because the statement itself is hearsay, so --

16 MS. JANDRAIN: Well, Mr. Godoy, you did the exact same
17 thing.

18 MR. GODOY: But it was a different situation because it
19 was an admission --

20 MS. SILAS: It's an admission by --

21 MR. GODOY: -- by a party opponent, but that's the
22 difference here. Here, this individual --

23 MS. SILAS: It's an employee.

24 MR. GODOY: -- is an employee.

25 JUDGE AMCHAN: I don't -- I think any prior statement

1 that she's made is fair game.

2 MR. GREENBAUM: She's here in court --

3 JUDGE AMCHAN: Right.

4 MS. SILAS: Only if it's under oath and --

5 JUDGE AMCHAN: Well, it was under oath.

6 MS. SILAS: -- offered as a prior inconsistent statement
7 or the witness is unavailable, and those two prongs haven't
8 been met here.

9 MR. GREENBAUM: The problem, then, Your Honor, is every
10 document is hearsay --

11 JUDGE AMCHAN: Well, I'm --

12 MS. SILAS: I mean, if you're going to throw all the
13 rules of conducting --

14 MR. GREENBAUM: It's document -- well, then, every
15 document is hearsay.

16 JUDGE AMCHAN: Well, let me short-circuit -- I'm going
17 to let you do it. Ask her what's in the affidavit, and then
18 if there are questions, I'd ask her, ask her about it.

19 MS. JANDRAIN: Okay. And let me see. I'll try and just
20 point -- in the Spanish version, it appears at page 4,
21 line 6.

22 RECROSS-EXAMINATION

23 Q. BY MS. JANDRAIN: Okay. Now, is it correct that your
24 affidavit says, "There is a union trying to organize the
25 employees at the Shady Grove site. As far" --

1 MS. JANDRAIN: Oh, sorry, go ahead.

2 THE INTERPRETER: No, no, you can finish.

3 Q. BY MS. JANDRAIN: "As far as I know, the organization
4 started with Tomas passing out union cards to the employees
5 sometime in October 2013." That's what your statement says,
6 correct?

7 A. Yes.

8 MS. JANDRAIN: I have nothing else.

9 JUDGE AMCHAN: Okay. Anything else?

10 MS. SILAS: No.

11 JUDGE AMCHAN: You can step down. Thank you.

12 (Witness excused.)

13 JUDGE AMCHAN: Okay. We'll go off the record while you
14 get your next witness, but you might at least want to place
15 up her affidavit, whoever put it there.

16 MS. SILAS: I'll take it.

17 JUDGE AMCHAN: Yeah.

18 (Off the record from 3:41 p.m. to 3:45 p.m.)

19 JUDGE AMCHAN: Okay. Back on the record.

20 If you would raise your right hand.

21 (Whereupon,

22 MARIA ELENA CHAVEZ

23 was called as a witness by and on behalf of the General
24 Counsel and, after being first duly sworn, was examined and
25 testified, through an interpreter, as follows:)

1 DIRECT EXAMINATION

2 Q. BY MR. GODOY: Ms. Chavez, can you please state your
3 full name for the record?

4 A. My name is Maria Elena Chavez.

5 Q. Can you please spell your full name for the record?

6 A. M-a-r-i-a E-l-e-n-a C-h-a-v-e-z.

7 Q. Okay. Ms. Chavez, have you ever been employed by Tito
8 Contractors?

9 A. Yes, sir.

10 Q. And when did you work for Tito Contractors?

11 A. March 2004 until December 13, 2013.

12 Q. And what position did you hold while you were working --
13 I'm sorry -- and where did you work when you worked at Tito
14 Contractors?

15 A. In Montgomery County.

16 Q. At the Montgomery County Recycling Center?

17 A. Yes, sir.

18 Q. And did you work as a sorter?

19 A. Yes, sir.

20 Q. And what materials would you sort?

21 A. Water plastic number one.

22 Q. Okay. And did you work a specific station or area?

23 A. Yes. I used to work Line 37A.

24 Q. And when you were employed at the recycling center, how
25 many other Tito employees worked at the Montgomery County

1 Recycling Center?

2 JUDGE AMCHAN: I think any stuff that's in the record
3 and it's not really in dispute I think you can skip over.

4 MR. GODOY: Okay. Very well, Your Honor.

5 Q. BY MR. GODOY: Ms. Chavez, Tomas Berganza, do you know
6 who he is?

7 A. Yes, sir. He used to be my supervisor.

8 Q. And how long did he serve as your supervisor?

9 A. I don't remember. It could be between three and four
10 years.

11 Q. Okay. Now, going back for a moment, how long did you
12 work at the Montgomery County Recycling Center?

13 A. Nine years and nine months exactly.

14 Q. Okay. In addition to the employees that were Tito
15 Contractor -- the Tito Contractor employees that worked at
16 the recycling center, did you work with any other employees?

17 A. Yes, sir.

18 JUDGE AMCHAN: I think this also is stuff that's pretty
19 well established.

20 MR. GODOY: Well, can I just lead her through it, Your
21 Honor?

22 JUDGE AMCHAN: Quickly.

23 Q. BY MS. JANDRAIN: Were they MES employees, Ms. Chavez?

24 A. I don't understand the question.

25 Q. Were the other employees that you worked with, were they

1 employees of MES?

2 A. Yes.

3 Q. Okay. And do you recall the names of the MES employees
4 that you worked with were?

5 A. No, maybe some.

6 Q. Okay. Do you remember Juana Rosales?

7 A. Yes, sir.

8 Q. Norma Garcia?

9 A. Yes, sir.

10 Q. And did you work with them while you were employed at
11 the Montgomery County Recycling Center?

12 A. Yes, sir.

13 Q. Okay. And do you know who they reported to?

14 A. Yes, sir.

15 Q. To who?

16 A. To Mr. Mark Wheeler and to David Wyatt.

17 Q. And when you worked at the recycling center, did you
18 ever communicate or interact with Mark Wheeler or

19 David Wyatt?

20 A. Only in the mornings when I saw him, I would say hi.

21 Q. And did you ever talk to them?

22 A. No, sir.

23 Q. And why not?

24 A. Because it was prohibited.

25 Q. And who prohibited you from speaking to them?

1 A. Mr. Tomas Berganza.

2 Q. And do you know what you were prohibited from talking to
3 them about?

4 A. He said because we were Tito Contractors employees.

5 Q. Okay. Do you recall the last time Tomas Berganza
6 advised you -- prohibited you from talking to David Wyatt and
7 Mark Wheeler --

8 A. Yes, sir.

9 Q. And when was that?

10 A. October 10th, 2013.

11 Q. And what happened on October 10th?

12 A. On October 10th, us, the workers, especially myself, we
13 had problems in regards a security system that they had
14 imposed on us.

15 Q. Okay. And what happened?

16 A. It was about the goggles.

17 Q. Okay. Did you tell --

18 A. The situation was harmful. We had headaches, some
19 people were having stomach problems. Then I approached my
20 supervisor, Mr. Tomas Berganza, and I told him about the
21 problem we were having.

22 Q. Did he respond?

23 A. He said that he has already informed the safety manager.

24 Q. And do you know who the safety manager was?

25 A. I only know that it was Mr. Stedson.

1 Q. Stedson Linkous?

2 A. Yes, sir.

3 Q. Okay. Then what did you do?

4 A. That they felt extremely bad, and we haven't received
5 any answer from anyone. Then I approached

6 Mr. Tomas Berganza, and I told him that I needed to speak
7 with Mr. Mark Wheeler.

8 Q. Now, had you spoken to Tomas before October 10th about
9 the goggles?

10 A. Yes, sir.

11 Q. Okay. Now, when you told him that you wanted to speak
12 to Mark Wheeler, what did he say, if anything?

13 A. That it was absolutely prohibited to speak with the MES.

14 Q. Okay. Did he say anything else?

15 A. He told me no, that I couldn't speak with him,
16 absolutely not.

17 JUDGE AMCHAN: Well, let's go back. When was the first
18 time you talked to Mr. Berganza about the goggles?

19 THE WITNESS: I do not remember exactly.

20 JUDGE AMCHAN: Do you know whether we're talking about
21 weeks, months, or days?

22 THE WITNESS: At least two weeks before.

23 Q. BY MR. GODOY: Okay. And after Mr. Berganza told you
24 you could not speak to Mr. Wheeler, did you respond?

25 A. Yes, sir.

1 Q. What did you say?

2 A. I told him that we live in America and this is a country
3 of freedom of speech.

4 Q. Okay. And did he respond?

5 A. Then he said do whatever you want then.

6 Q. Now, before he responded, after you said we live in
7 America, did you say anything else?

8 A. No. He only said that, and immediately he called
9 Mr. Mark Wheeler and David Wyatt.

10 Q. No, but I'm asking you after you said that you -- that
11 this was America and free country, or whatever it is that you
12 said, did you say anything else?

13 A. Yes, sir.

14 Q. What did you say?

15 A. I said that you could even go speak with the President
16 as long as we don't disrespect him.

17 Q. Okay. And then what happened?

18 A. Then he called Mr. Mark Wheeler.

19 Q. Okay. And did you speak to Mark Wheeler?

20 A. Yes, sir.

21 Q. And did he call Mark Wheeler or did you call
22 Mark Wheeler?

23 A. He called him.

24 Q. Okay. And so what happened when he called Mark Wheeler?

25 A. Mark Wheeler and Mr. David Wyatt arrived to the office.

1 Q. And was Tomas present?

2 A. Yes, sir.

3 Q. Okay. And what happened when they got there?

4 A. I explained the problems to Mr. Mark Wheeler about the
5 goggles.

6 Q. Did you speak in English or Spanish?

7 A. In Spanish. Mr. Tomas was translating.

8 Q. Okay. And what did Mr. Wyatt say?

9 A. Mark Wheeler told me that he understands the problem
10 that we were facing at that moment, that he was going to try
11 to help us.

12 Q. Okay. And did he help you?

13 A. No, because on that same day, Mr. Stedson arrived.

14 Q. Stedson Linkous?

15 A. Yes, sir.

16 Q. Okay. And did you meet with him?

17 A. Yes, sir.

18 Q. And where was this meeting?

19 A. At the MES offices on the second floor.

20 Q. Okay. And other than Mr. Stedson Linkous, was anybody
21 else there?

22 A. Mr. Tomas Berganza.

23 Q. Okay. And what was discussed?

24 A. When I arrived, Mr. Stedson Linkous told me why do you
25 ask -- why do you speak with the MES.

1 Q. And did you respond?

2 A. I told him we have problems with the goggles, I asked
3 for help, and nobody from your office responded to me.

4 Q. And what did he say?

5 A. Then he asked Tomas, and he said why you didn't tell me.

6 Q. And did Tomas respond?

7 A. Tomas said I told you.

8 Q. Okay. What else was said?

9 A. He said it's absolutely prohibited for you to speak with
10 them.

11 Q. Who said --

12 JUDGE AMCHAN: Well, who said that?

13 THE WITNESS: Mr. Stedson.

14 JUDGE AMCHAN: Were there any other employees in the
15 room besides you, Mr. Stedson Linkous and Tomas?

16 THE WITNESS: No, sir.

17 Q. BY MR. GODOY: Okay. And after he said that it was
18 prohibited, was anything else said?

19 A. You have seven days of suspension from work.

20 Q. And I'm sorry, the person who said this to you was who?

21 A. Mr. Stedson.

22 Q. And was Mr. Stedson talking to you in English or
23 Spanish?

24 A. In English.

25 Q. And with Tomas translating?

1 A. Yes, sir.

2 Q. Okay. And after he told you that you were suspended for
3 seven days, anything else said?

4 A. He said that I disrespected the supervisor.

5 Q. Said you disrespected the supervisor?

6 A. No, sir.

7 Q. No, no, I'm asking you did he tell you that you had
8 disrespected the supervisor?

9 A. Yes. He told me that I disrespected my supervisor with
10 the things that I said.

11 Q. I see. What else was said, if anything?

12 A. Then he said that if I apologize to the supervisor, I
13 could possibly keep my job.

14 Q. Okay. Did you apologize?

15 A. Yes, sir.

16 Q. And when you say -- let me say this in Spanish, Your
17 Honor -- "seguir trabajando," did he mean keep working or
18 keep your job?

19 A. He told me that he was going to lift the seven-day
20 suspension at that moment.

21 Q. Okay. Did you apologize?

22 A. Yes, sir.

23 Q. And was the suspension lifted?

24 A. Yes.

25 Q. Okay. Did he say anything to you before the meeting

1 ended?

2 A. He said next time you do something like that, you will
3 be fired.

4 Q. And about how long were you in the office with Tomas and
5 Stedson Linkous?

6 A. Between 15 and 20 minutes.

7 Q. Now, Ms. Chavez, I want to direct your attention now to
8 the Painters Union. Are you familiar with the Union?

9 A. Yes, sir.

10 Q. And when did you become aware of the Union?

11 A. I remember it was in the month of October at the
12 beginning.

13 Q. Okay. And how did you become aware of the Union?

14 A. Through two coworkers at work.

15 Q. And who were they?

16 A. Aracely Ramos and Yasmin Ramirez.

17 Q. Okay. After you learned about the Union, did you attend
18 any meetings?

19 A. Yes, sir.

20 Q. And during the month of October, how many meetings did
21 you attend?

22 A. Two meetings.

23 Q. And the first meeting, do you remember when you attended
24 it?

25 A. I don't remember the exact date, but I know it was at

1 the beginning of October.

2 Q. And do you recall who you attended the meeting with?

3 A. Yes. It was five of us on that occasion.

4 Q. Okay. Do you remember who they were?

5 A. Yes. It was Aracely Ramos, Yasmin Ramirez,
6 Elizabeth Lemus, Reyna Sorto, and myself.

7 Q. And do you recall where the meeting was held?

8 A. At the union offices.

9 Q. Okay. Do you recall what happened at the meeting?

10 A. Yes, sir.

11 Q. What happened?

12 A. We spoke with Mr. Sandro Baiza about the problem we had
13 at work. We needed vacation because we never had them. And
14 we were doing it for another type of help because of the
15 problems that we had with the goggles.

16 Q. All right. And at that meeting, do you recall if you
17 signed a union card?

18 A. Yes, sir.

19 Q. Now, I want to ask you about the second meeting that you
20 attended in October 2013. Did you recall when you attended
21 that meeting?

22 A. Yes, sir.

23 Q. When was that?

24 A. I don't remember the exact date. I know it was mid-
25 October.

1 Q. Okay. And where was that meeting held?

2 A. In the Wendy's restaurant.

3 Q. And is that near your -- the Montgomery County Recycling
4 Center?

5 A. Yes, sir.

6 Q. And who did you attend the meeting with?

7 A. On that occasion, we took Alba Rauda.

8 Q. Okay. And did the women that you previously named that
9 you attended the first meeting also attend the second?

10 A. Yes, sir.

11 Q. And Ms. Chavez, I want to direct your attention to
12 December 13th, 2013. Did you work that day?

13 A. Yes, sir.

14 Q. Did you work the entire day?

15 A. No, sir.

16 Q. Okay. And until what time did you work?

17 A. Until 9, 9:15.

18 Q. Okay. What happened at that time?

19 A. At 9:00 in the morning, I went to my break. When I
20 returned back to my job, Mr. Tomas Berganza was there waiting
21 for me.

22 Q. Okay. Where was he waiting for you?

23 A. He was waiting for me in the upstairs office on the
24 second floor.

25 Q. And is that an area that you have to walk by to get to

1 work?

2 THE INTERPRETER: I'm sorry?

3 Q. BY MR. GODOY: Is that an area that you have to walk by
4 to get back to work?

5 A. Yes, sir.

6 Q. Okay. So what did he say to you?

7 A. He told me to go with him for a moment to his office.

8 Q. Okay. And did you go with him?

9 A. Yes, sir.

10 Q. And which office did you go to and where?

11 A. To the MES office.

12 Q. And where is that located?

13 A. On the upstairs level, the second floor.

14 Q. I see. And did you go with him to the office?

15 A. Yes, sir.

16 Q. And was anybody else there?

17 A. Yes, sir.

18 Q. Who was there?

19 A. Mr. Alex Pierola.

20 Q. And once you got into the office, what was discussed at
21 that meeting?

22 A. Mr. Tomas Berganza told me that MES had reported the
23 incident that took place Tuesday the 10th.

24 JUDGE AMCHAN: So this is Mr. Pierola talking?

25 THE WITNESS: No.

1 JUDGE AMCHAN: Tomas?

2 THE WITNESS: Yes, sir.

3 Q. BY MR. GODOY: Okay. Did he say anything else?

4 A. They said that about -- because of that incident, MES
5 reported the Company. And the Company had decided to fire
6 me.

7 Q. Did he tell you why?

8 A. Because of the incident that took place on the 10th.

9 Q. Okay. And did Mr. Berganza say anything else?

10 A. They said that they have investigated the situation and
11 that some people have testified that I wanted to hit
12 Ms. Juana Rosales.

13 Q. Okay. And then what, if anything, did he say or do?

14 A. That's all. And then he said, Elena, thank you for the
15 years that you have worked for us. And with a mocking smile,
16 he said now go to the Union to get help.

17 Q. And did he give you anything during that meeting?

18 A. Yeah. He gave me the termination letter in an envelope.

19 Q. I'm going to show you what's been previously marked for
20 identification as General Counsel Exhibit 31.

21 MS. JANDRAIN: Oh, Your Honor, can I just ask that the
22 witness remain --

23 JUDGE AMCHAN: It's really up to you.

24 MS. SILAS: She's already testified.

25 JUDGE AMCHAN: Well --

1 MS. JANDRAIN: I think it's unlikely that we'll have to
2 recall her, but I just don't want --

3 JUDGE AMCHAN: Well, I mean, they may, they may recall
4 her. They may call her as part of her case. I mean, it's
5 really up to you.

6 MS. JANDRAIN: Can we, yeah, could we keep her in the
7 witness room, please?

8 JUDGE AMCHAN: Okay. She'll have to --

9 Q. BY MR. GODOY: Now, Ms. Chavez, I've handed you what's
10 been marked as General Counsel Exhibit 31. And please tell
11 me what General Counsel Exhibit 31 is.

12 A. It's a copy of the termination letter that was given to
13 me on that day of Friday the 13th.

14 Q. And now, at any point during the meeting, did
15 Alex Pierola say anything to you?

16 THE INTERPRETER: Any point what again?

17 MR. GODOY: During the meeting.

18 THE WITNESS: No, sir.

19 Q. BY MR. GODOY: About how long did the meeting last?

20 A. Between 10 and 15 minutes.

21 Q. Okay. And after you left the office, what, if anything,
22 did you do?

23 A. I went to the locker to gather my belongings.

24 Q. And from there?

25 A. I went home.

1 Q. Okay. Now, Ms. Chavez, I want to ask you about the
2 incident that occurred on December 10th, the incident that
3 Tomas was referring to when he advised you that you were
4 fired. What happened on that day?

5 A. On that day, I was working on Line 37 on my workplace
6 when all of a sudden dirty water got on my face.

7 Q. What do you mean it got on your face?

8 A. Dirty water was spilled on my face from the garbage on
9 the second station.

10 Q. Okay. And so your station, 37A, is located where?

11 A. On the lower line on the floor.

12 Q. On the lowest level?

13 A. Yes, sir.

14 Q. And is there a station or area above you?

15 A. Yes, sir.

16 Q. And what station or area is that?

17 A. That's the light sort line.

18 Q. Okay. And is that where the water fell from?

19 A. Yes, sir.

20 Q. Okay. When it fell on you, what, if anything, did you
21 do?

22 A. I looked up, and I seen one of my coworkers looking at
23 me.

24 Q. Do you remember who she was?

25 A. Yes, Ms. Iris.

1 Q. Okay.

2 A. I told them not to spill water because they were wetting
3 me.

4 Q. Okay. Then what did you do?

5 A. Then Ms. Juana Rosales got there to see.

6 Q. And where did she come from?

7 A. She was working as well. She just looked over.

8 Q. Did she look down at you?

9 A. Yes, sir.

10 Q. Did she say anything?

11 A. No, sir.

12 Q. Did you say anything to her?

13 A. No, sir.

14 Q. And then what happened?

15 A. Then I looked for another coworker to cover me in my
16 position so I could go to the bathroom and clean my face.

17 Q. And did you do that?

18 A. Yes, sir.

19 Q. And did you return back to the line to your station once
20 you washed your face?

21 A. Yes, sir. I went back to the station.

22 Q. Okay. And then what happened?

23 A. There were, like, 10, 15 minutes left to stop the plant
24 altogether. When the plant stopped, I went to the office to
25 leave the security system that we utilize.

1 Q. Now, which office are you talking about?

2 A. The office where Mr. Tomas Berganza.

3 Q. And what safety equipment are you talking about?

4 A. The goggles and the helmet.

5 Q. Okay. And were you the only person that was doing this,
6 going to drop off your safety equipment to the office where
7 Tomas is?

8 A. No. It was the end of the day, and all the workers were
9 going there.

10 Q. Okay. When you got to the office, what happened?

11 A. Ms. Juana Rosales was complaining about myself,
12 Juana Rosales.

13 Q. And who was she complaining to?

14 A. To Mr. Tomas Berganza.

15 Q. Did you hear what she was saying?

16 A. She said that I was complaining that I got wet, but no
17 one was there.

18 Q. Did you say anything?

19 A. I said, yes, ma'am, somebody was there. I was there.

20 Q. Did she respond?

21 A. She said that no one was there, and then I was directing
22 myself to my supervisor, Mr. Tomas Berganza. And I said it
23 was Iris, the one who dropped the water. Then Juana said at
24 that time, she said it was not Iris. She was hitting her
25 chest like this, and she said, it was me. And she said on

1 several occasions, she said, it was me, it was me.

2 Q. She was hitting her chest when she was doing that?

3 A. She was hitting herself really hard, and she was saying,
4 it was me, it was me.

5 Q. Okay. And did Tomas respond?

6 A. No. Tomas was only watching her.

7 Q. Okay. And did you respond to her?

8 A. And then I said again it was Iris. And then I said to
9 Tomas please investigate the situation. That's why they are
10 firing us from our job.

11 Q. And did he respond?

12 A. No, sir.

13 JUDGE AMCHAN: You're talking about the meeting on
14 December 13th?

15 THE WITNESS: Yes, sir.

16 MR. GODOY: No, Your Honor. She's testifying about the
17 incident on the 10th.

18 JUDGE AMCHAN: No, no, no. The conversation she's
19 having in the office.

20 MR. GODOY: Is from the 10th.

21 MS. SILAS: That's from the 10th.

22 JUDGE AMCHAN: Okay. So you went to Mr. Berganza's
23 office on December 10th after the water fell on you?

24 THE WITNESS: Yes, sir.

25 JUDGE AMCHAN: And then Ms. Rosales was -- Juana Rosales

1 was there, and that's when this conversation occurred?

2 THE WITNESS: December 10th.

3 JUDGE AMCHAN: Okay. Okay.

4 Q. BY MR. GODOY: Okay. Now, I asked you a question
5 earlier, and I think -- the interpreter -- I apologize. So
6 after you asked Tomas to investigate, did he respond?

7 A. No, sir.

8 Q. Okay. And what did he do?

9 A. He left.

10 Q. Do you know where he went?

11 A. To his house.

12 Q. And you didn't see him actually leave the building, did
13 you?

14 A. Yes, sir.

15 Q. Now, from Tomas' office, where did you go?

16 A. To the lockers.

17 Q. Okay. Now, just going back for a moment, when you were
18 in the office talking with -- discussing or arguing, however
19 you want to call it, with Juana in the presence of Tomas,
20 were there other employees present?

21 A. Yes, sir.

22 Q. And were you the only person who left the office to go
23 to the locker room?

24 A. All the workers were going at that time.

25 Q. Okay. And where is the locker room located?

1 A. The second floor.

2 Q. Okay. So how do you get there from Tomas' office?

3 A. We went up the stairs.

4 Q. Okay. So did you, Juana, and the other employees that
5 were present go up the stairs together?

6 A. Yes, sir.

7 Q. And did any discussion take place on the way from Tomas'
8 office to the locker room?

9 A. Yes, sir. I wanted to talk to Juana about the
10 situation. I've never had problems with MES and nevertheless
11 with her. And I told her that respect calls for respect.
12 She got extremely angry, and she started yelling loud.

13 Q. And what was she saying?

14 A. And she said, are you telling me that I was
15 disrespecting you, she said.

16 Q. Did you respond?

17 A. I said, ma'am, yes, you are right. When it comes to
18 Tito's personnel to be afraid of you guys because for
19 anything you guys make a problem for us.

20 Q. Okay. And when you said this to her, were you in the
21 stairwell, in the locker room? Where were you?

22 A. Approaching the lockers.

23 Q. And were both of you yelling or talking in loud voices?

24 A. Yes, sir.

25 Q. Okay. And when you got to the locker room, what, if

1 anything, did you do?

2 A. We were in the -- Juana stay at the entrance, and I have
3 to go around because my locker is on the outside. There is a
4 wall that divides the lockers.

5 Q. Okay. Did you guys continue to argue or to talk or yell
6 at each other?

7 A. Well, she just said to me, you are going to tell me in
8 front of Mark Wheeler.

9 Q. And did you respond?

10 A. Yes, sir.

11 Q. And what did you say?

12 A. I said, yes, ma'am. Whatever you decide, we will, no
13 problem.

14 Q. Okay. And then after that, what, if anything, happened?

15 A. Nothing else happened. We just went home on that day.

16 Q. Now, you said that Juana, upon entering the locker room,
17 she stopped. Why did she stop, do you know?

18 A. Because that's where her locker is located.

19 Q. And were there any other employees that were present in
20 the locker room while you and Juana were having this
21 discussion?

22 A. Yes, sir.

23 Q. Do you recall who they were?

24 A. I remember one of them, Ms. Elcy Bargas, was there,
25 Maritza Flores and some others.

1 Q. Now, when you left the locker room, was Juana still in
2 the locker room?

3 A. No, sir.

4 Q. And when you left the locker room, where did you go?

5 A. To my house.

6 Q. And did you go talk to Tomas?

7 A. No, sir.

8 Q. Did you attempt to find Tomas or talk to him?

9 A. No, sir.

10 Q. Now, at any point during your discussion or argument
11 with Juana, whether it be in the office of Tomas, in the
12 stairwell, or in the locker room, did you threaten to hit
13 her?

14 A. No, sir.

15 Q. Did you make any aggressive gestures towards her?

16 A. No, sir.

17 Q. Did you walk too closely by her?

18 A. No, sir.

19 Q. And when you entered the locker room or the stairwell,
20 were you in front or behind Ms. Rosales?

21 A. When we're going inside the locker room, she stays here
22 and I go around because her locker is right here and mine is
23 around, so there is a wall dividing both sides, and her
24 locker is on this side.

25 Q. My question, though, is did you walk into the locker

1 your full name for the record?

2 A. Maria Raquel Sanchez.

3 Q. And can you please spell your full name for the record?

4 A. M-a-r-i-a R-a-q-u-e-l S-a-n-c-h-e-z.

5 Q. Ms. Sanchez, have you ever been employed by Tito
6 Contractors?

7 A. Yes.

8 Q. And when did you work for Tito Contractors?

9 A. I worked on two occasions.

10 Q. Okay. The first occasion that you worked, when was
11 that?

12 A. The first time was in 2007 until 2008.

13 Q. Okay. And what position did you hold when you worked
14 during that period of time?

15 A. Construction helper.

16 Q. Okay. And what did you do as a construction helper?

17 A. Can you repeat the question?

18 Q. As a construction helper, what kind of work did you do?

19 A. I was helping the boys to sweep and gather the
20 materials.

21 Q. I see. And where did you do this work?

22 A. In Baltimore and Virginia, Washington, Maryland.

23 Q. Okay. And why did you leave this position?

24 A. Because I was pregnant.

25 Q. I see. And what about the second time that you worked

1 for Tito Contractors. When was that?

2 A. It was May 6th, 2013.

3 Q. Until when?

4 A. Until October 30th, 2013.

5 Q. And where did you work during this period of time?

6 A. In the recycling center in Montgomery County.

7 Q. And what did you do there?

8 A. I was at the plant where they gathered the light sorts.

9 Q. So light sort station?

10 A. Yes.

11 Q. And what material did you pick?

12 A. I was taking the colored material.

13 Q. And what sort of materials are colored -- is this
14 colored plastic?

15 A. Like the detergent containers, oil and the instant
16 coffee.

17 Q. Okay. These were all plastic materials?

18 A. Yes.

19 Q. Okay. And did you work with anybody else in the light
20 sort station or area?

21 A. There were 10 more employees.

22 Q. Okay. And did those employees also select colored
23 materials?

24 A. Yes.

25 Q. And did they pick the same materials you were picking?

1 A. No, different colors.

2 Q. Okay. So, now, what do you mean by different colors?

3 A. Different, the one from the milk, the clear one for
4 water, and aluminum.

5 Q. Okay. So were you the only person who was picking
6 colored materials?

7 A. Yes.

8 Q. Now, was Tomas Berganza your supervisor?

9 A. Yes.

10 Q. Okay. And before you left your employment at Montgomery
11 County Recycling Center, how many Tito employees other than
12 yourself did you work with?

13 A. In the plant?

14 Q. Yes.

15 A. Between 28 and 30.

16 Q. Now, in addition to the light sort station, picking
17 colored plastics, did you ever pick any other materials other
18 than colored plastics?

19 A. No.

20 Q. Did you ever work in any other area or station?

21 A. I worked in 37A when they did a test who will make more
22 production during the day in a hopper.

23 Q. Okay. And how many times did you do that?

24 A. Twice.

25 Q. Okay. And that's the 37A station?

1 A. Yes.

2 Q. Okay. And other than those two occasions, did Tomas or
3 anybody else ever move you to any other station other than
4 the colored plastics, which is in light sort?

5 A. No.

6 Q. Now, did you work with any of the employees at the light
7 sort station that were employees of MES?

8 A. Yes, with two people.

9 Q. Do you recall what their names were?

10 A. One is Juana Garcia, who is Rosales, and Norma Garcia.

11 Q. And did you work with them together?

12 A. No, they would take turns, one in the morning and the
13 other one after lunch.

14 Q. I see. Now, Ms. Sanchez, I want to direct your
15 attention to the Painters Union. Are you familiar with the
16 Union?

17 A. Yes.

18 Q. And when did you become aware or familiar with the
19 Union?

20 A. It was the beginning of October.

21 Q. Okay. And how did you become aware of the Union?

22 A. I found out through Reyna Sorto and Maria Chavez.

23 Q. And what did they tell you, if you remember?

24 A. If I could go to the meetings of the Union. And they
25 could tell us how they could help us when it comes to work

1 exploitation.

2 Q. And did you go to a meeting with them?

3 A. Yes, I did go.

4 Q. And do you recall where it was?

5 A. It was at the Wendy's in Rockville.

6 Q. Okay. And do you recall about when you attended this
7 meeting?

8 A. I don't remember the date, but it was around mid-
9 October.

10 Q. In 2013?

11 A. 2013.

12 Q. Now, when you attended the meeting, do you recall who
13 was there from the Union?

14 A. There was Mr. James and Sandro.

15 Q. Do you remember how many employees attended the meeting?

16 A. There were, like, 10 of us.

17 Q. Okay. And do you recall what Sandro or James talked
18 about?

19 A. They talk about what is the meaning of the Union and the
20 benefits that they can help us with through the exploitation
21 that they have towards us at work.

22 Q. And during this meeting, did you sign a union card?

23 A. Yes.

24 Q. And about how many meetings did you attend in the month
25 of October before you were fired?

1 A. One.

2 Q. Okay. And, Ms. Chavez, I want to direct your attention
3 -- I'm sorry -- Ms. Sanchez, I want to direct your attention
4 to October 30th, 2013. Did you report to work on that day?

5 A. Yes.

6 Q. Okay. Until what time did you work?

7 A. Until 2 p.m.

8 Q. Okay. And what happened at 2 p.m.?

9 A. We had a break at 2 p.m. When I went back to work,
10 Tomas Berganza called me to go to his office.

11 Q. And how did he call you?

12 A. Through a radio that Juana Garcia had.

13 Q. Juana Garcia is the MES employee that's --

14 A. Yes.

15 Q. Okay. And did you go up to Tomas -- or go to Tomas'
16 office?

17 A. Yes.

18 Q. And where is his office located?

19 A. It's on the first floor of the MES.

20 Q. And is this where you turn in your helmet and goggles
21 every day?

22 A. Yes.

23 Q. Okay. And when you arrived to Tomas' office, who was
24 there?

25 A. It was only him.

1 Q. Okay. And once you got there, what, if anything,
2 happened?

3 A. He was waiting for me, sitting down behind the door.
4 When I went in, he closed the door.

5 Q. And what did he say to you?

6 A. He said that he had bad news for me.

7 MR. GODOY: I'm sorry. Can we get a new translation of
8 that?

9 THE INTERPRETER: He said that he had bad news.

10 Q. BY MR. GODOY: What did he say to you, from the
11 beginning?

12 A. He told me that he had bad news.

13 THE INTERPRETER: "Portador" means as I'm carrying bad
14 news literally.

15 MR. GODOY: Right.

16 THE INTERPRETER: Carrying bad news.

17 MR. GODOY: Could it be that he was the bearer of bad
18 news?

19 THE INTERPRETER: That could be it also, yes, he was the
20 bearer of bad news.

21 MR. GODOY: Okay.

22 Q. BY MR. GODOY: And what did he say after that?

23 A. He told me that he has been informed that I had
24 communication with the Union, and I told him that who told
25 him that, that that was a lie. Then he told me that he was

1 not going to tell me anything and that he had the news that I
2 was fired from work.

3 Q. Did he say anything else?

4 A. And I asked him why was he firing me, because during
5 that time that I was working there, he had me six months in
6 the same place. And he told me that he couldn't do anything
7 because that was a decision that was already made, that I was
8 not doing my job correctly.

9 Q. And what did he say you were doing wrong?

10 A. That I was letting a lot of material go, and then I
11 asked him why until now you are noticing that I'm letting a
12 lot of material go after being here for six months in that
13 same place.

14 Q. Did you ask him to move you to another position or area?

15 A. And then I told him that if there was a lot of
16 production that was being lost, why he didn't change me to
17 another place.

18 Q. And what did he say?

19 A. He said, no, that he decides who better -- who will take
20 out or whatever he wanted to.

21 Q. And after he said this, what if anything else happened?

22 A. Then I said it was unfair what he was doing with me
23 because I didn't even receive a warning, that I didn't
24 receive a warning or a verbal warning saying that I was not
25 doing my job properly. Then I cried, and I said that it was

1 impossible for him to take me out of there. Then he told me
2 that he couldn't do anything, that I was fired.

3 Q. And did the meeting end there?

4 A. At that moment, I told him to give me the termination
5 letter. He told me that he didn't have it with him. Then I
6 told him why you don't have it if you were firing me.

7 Q. What did he say?

8 A. He told me to come back the next day. I came back. He
9 told me he didn't have it yet, to go to the office, to the
10 Tito Contractor's office, to go over there, that they were
11 going to give it to me there.

12 Q. Okay. So when he fired you on October 30th, he didn't
13 have the letter?

14 A. No.

15 Q. And then you returned on the 31st?

16 A. Yes, and he didn't have it.

17 Q. Okay. So when did you pick it up from the office?

18 A. Three days after I was fired.

19 Q. And when we say office, what are you referring to?

20 A. Tito Contractor's office.

21 Q. And what time did you --

22 JUDGE AMCHAN: Well, does she mean at Shady Grove or
23 someplace else?

24 Q. BY MR. GODOY: Are you talking about the office in
25 Montgomery County Recycling Center?

1 A. No.

2 Q. So which office are you referring to?

3 A. The main office for Tito Contractor's located in
4 Washington.

5 Q. Okay. Now, when you went to see if Tomas had the letter
6 on the 31st, did you go to Montgomery County Recycling
7 Center?

8 A. Yes.

9 Q. Okay. About what time did you go?

10 A. Noon.

11 Q. Okay. And did you meet with Tomas in person?

12 A. Yes.

13 Q. Now, when you picked up -- going back now, the following
14 day, the -- number one, did you meet with anybody to get the
15 letter?

16 A. One of Tito's secretaries gave it to me.

17 Q. When you say Tito, are you referring to the Company or
18 are you referring to Maximo Pierola?

19 A. Company.

20 Q. Ms. Sanchez, I want to show what's been previously
21 received as General Counsel's Exhibit 16. Ms. Sanchez, can
22 you please tell me what General Counsel Exhibit 16 is?

23 A. This is my termination letter.

24 Q. Is this the letter that you picked up on November 1st?

25 A. Yes.

1 Q. Now, Ms. Sanchez, before October 30th, 2013, did anybody
2 ever talk to you about your performance?

3 A. No.

4 Q. And by anybody, I mean Tomas Berganza, somebody from MES
5 or someone from Tito Contractors?

6 A. No.

7 Q. Did Tomas or anyone else from MES or Tito Contractors
8 ever tell you that your productivity was low?

9 A. No.

10 Q. Did Tomas or anyone else from MES or Tito Contractors
11 ever tell you that you were letting too much materials pass
12 on the line?

13 A. No.

14 Q. And, Ms. Sanchez, had you ever had any problems or
15 issues with coworkers at Tito Contractors?

16 A. No.

17 Q. Did you ever have any trouble with any employees at the
18 Montgomery County Recycling Center?

19 A. No.

20 Q. Any Tito employees that work there?

21 A. No, never.

22 Q. What about MES employees?

23 A. Never.

24 Q. So no problems with Tito employees or MES employees?

25 A. No.